

THREAD WALLETS, LLC vs BRIXLEY BAGS, LLC
KIMBERLY O'CONNELL (AEO-REDACTED) - 10/22/2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT UTAH, CENTRAL DIVISION

THREAD WALLETS LLC, a)	
Utah limited liability)	
company,)	
)	
Plaintiff,)	Case No.
)	2:23-cv-00874-JNP-JCB
vs.)	
)	Judge: Jill N.
BRIXLEY BAGS LLC, a)	Parrish
Utah limited liability)	
company,)	
)	
Defendant.)	

CONTAINS ATTORNEYS' EYES ONLY MATERIAL

DEPOSITION OF: KIMBERLY O'CONNELL

OCTOBER 22, 2024

9:10 A.M. TO 5:22 P.M.

Location: Law Offices of Workman Nydegger
60 East South Temple, Suite 1000
Salt Lake City, UT

Reporter: Phoebe S. Moorhead, CRR, RMR, CCR
Certified Court Reporter for the State of Utah

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A P P E A R A N C E S

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Also Present: Ethan O'Connell

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C O N T E N T S

Deposition of KIMBERLY O'CONNELL:	Page
Examination by Ms. Frandsen.....	5
Examination by Mr. Todd.....	350

-ooOoo-

A T T O R N E Y S ' E Y E S O N L Y

Description	Page
AEO Begins.....	109
AEO Ends.....	199
AEO Begins.....	343
AEO Ends.....	346

-ooOoo-

1	E X H I B I T S		
2	Exhibit	Description	Page
3	1	Notice of Deposition.....	10
4	2	Website Screenshot.....	48
5	3	Website Screenshot.....	62
6	4	Response to Interrogatories.....	69
7	5	Supplemental Response to Interrogatories.....	72
8	6	Letter.....	79
9	7	AEO - WhatsApp Messages.....	108
10	8	Photograph.....	137
11	9	AEO - WhatsApp Photographs.....	188
12	10	Instagram Screenshot.....	199
13	11	Cease and Desist.....	202
14	12	Copy of Text Messages.....	204
15	13	Letter.....	204
16	14	E-Mail String.....	213
17	15	E-mail String.....	223
18	16	Copy of Text Messages.....	224
19	17	E-mail String.....	226
20	18	E-mail String.....	235
21	19	Social Media Screenshots.....	239
22	20	Social Media Screenshots.....	250
23	21	Direct Message Screenshots.....	264
24	22	Copy of Text Messages.....	274
25	23	Copy of Text Messages.....	276
26	24	Copy of Text Messages.....	279
27	25	Social Media Screenshot.....	285
28	26	Social Media Screenshots.....	289
29	27	Copy of Text Messages.....	296
30	28	Copy of Text Messages.....	298
31	29	Copy of Text Messages.....	301
32	30	Letter.....	304
33	31	Copy of Text Messages.....	307
34	32	Facebook Screenshots.....	311
35	33	Copy of Text Messages.....	323
36	34	Website Screenshot.....	330
37	35	Website Screenshot.....	333
38	36	Photograph.....	337
39	37	Brixley Design Patent.....	338
40	38	AEO - Brixley Crossbody Sales.....	342
41	39	AEO - Brixley Strap Sales.....	346
42	40	Accounting Spreadsheet.....	347

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P R O C E E D I N G S

KIMBERLY O'CONNELL

called as a witness herein, having been first duly sworn by the Certified Court Reporter to tell the truth, was examined and testified as follows:

EXAMINATION

BY MS. FRANSEN:

Q. Will you please state your name for the record?

A. Kimberly Kempton O'Connell.

Q. Can you spell O'Connell?

A. O'-C-O-N-N-E-L-L.

Q. And are you represented by counsel in this matter?

A. Yes.

Q. And have you ever been deposed before?

A. I am not sure what deposed means.

Q. So we are taking a deposition here today. Basically I'm the lawyer for Thread Wallets, and I'll be asking you questions. You'll be providing answers. This is kind of actually the ground rules I'm about to get into.

A. Okay.

Q. So -- and the reason why I ask the question. So as you can see, we have our court

1 reporter Phoebe here at the end of the table. As I
2 ask you things, she's going to be writing down
3 everything we say. So it's really important that
4 you and I always speak verbally. So, for example,
5 if you're going to say "yes" or "no," I want you to
6 say "yes" or "no."

7 A. Okay.

8 Q. Don't nod or shake your head.

9 A. Okay.

10 Q. That was perfect.

11 A. Okay.

12 Q. And this testimony is provided under
13 oath. You just took an oath. And if we go to
14 trial in this matter, this testimony can be
15 presented in front of the judge and the jury as
16 your sworn testimony in this matter.

17 A. Okay.

18 Q. So I'll give you a couple more guidelines
19 as we go through. So another important thing for
20 our court reporter is that only one of us talks at
21 a time.

22 A. Okay.

23 Q. When we speak over each other, it makes
24 the record muddy and hard for her to write
25 everything down. If you don't understand a

1 question I ask, please ask me to restate it. Not
2 all my questions are perfect. Not all of my
3 questions are even very good. If you answer a
4 question, the record will reflect that you
5 understood and answered anyway.

6 A. Okay.

7 Q. If we talk about something and then you
8 remember something later on and you want to go back
9 to it, please let me know. I'm happy to go back.

10 A. Okay.

11 Q. You can ask for a break if you need one.
12 And we'll find a good place to take a break.

13 A. Okay.

14 Q. If there's a question pending, we'll have
15 you finish answering the question.

16 Your attorney will probably lodge
17 objections from time to time. So I'll ask a
18 question. He might object. We'll let him make his
19 objection. And then you'll go ahead and answer
20 unless he instructs you not to.

21 A. Okay.

22 Q. And, Kimberly, do you understand that you
23 are under oath right now?

24 A. I do.

25 Q. And do you understand that your testimony

1 can be presented in front of the judge and jury in
2 this case?

3 A. I do.

4 Q. Are there any obstacles that would impair
5 your ability to testify today?

6 A. No.

7 Q. Are you under any medications right now
8 that would --

9 A. Anxiety -- no.

10 Q. Okay -- that would impair your ability to
11 testify?

12 A. No.

13 Q. Are you under the influence of any
14 alcohol or drugs?

15 A. No.

16 Q. Typically the answers are "no" in these
17 depositions.

18 What did you do to -- well, so I don't
19 want to know about specific conversations you had
20 with your counsel.

21 A. Okay.

22 Q. But what else did you do to prepare for
23 this deposition?

24 A. Nothing.

25 Q. Did you speak with anyone else at

1 Brixley?

2 A. No.

3 Q. Did you talk about this with your
4 husband?

5 A. Yes.

6 Q. Outside of conversations with counsel?

7 A. Oh, yes.

8 Q. And what did you guys talk about?

9 A. The deposition.

10 Q. Was there anything specific that you
11 raised?

12 A. No.

13 Q. Did you review any documents before you
14 came here?

15 A. No.

16 I did not bring my glasses, though, so
17 I'll let you know if I can't read from that far.

18 Q. Okay. And we can always make it bigger.

19 A. Okay. Okay.

20 Q. And if this becomes a problem, we can
21 always print stuff out.

22 A. Okay.

23 Q. Can you see this exhibit on the screen
24 behind me?

25 A. Yes. I can see it. Yes.

1 Q. And if we can move, we can move you too.

2 A. Okay. If you ask me to read it, I
3 probably would have to move.

4 Q. Okay. Let's go ahead and do that now.
5 Let's take a break.

6 (Off the record from 9:14 a.m. to
7 9:15 a.m.)

8 Q. (BY MS. FRANDSEN) Kimberly, do you see
9 this exhibit on the screen behind you?

10 A. I do.

11 Q. So this is -- we're going to enter this
12 as Exhibit-A -- sorry -- Exhibit-1 to your
13 deposition.

14 (Exhibit-1 marked.)

15 Q. (BY MS. FRANDSEN) Have you seen this
16 document before?

17 A. I have.

18 Q. Do you know what this is?

19 A. A lawsuit.

20 Q. So this one, if you look, there's a
21 caption on the right-hand side where it says
22 "Thread Wallets LLC's Notice of Deposition of
23 Kimberly O'Connell." Do you see that?

24 A. Yes.

25 Q. Is your answer still the same that you've

1 seen this before?

2 A. Yes, but it looks just like the lawsuit
3 we got a while ago.

4 Q. Okay. Are you here in response to this
5 deposition notice?

6 A. I am.

7 Q. Okay. We're going to take a minute just
8 to talk about your personal background, so you can
9 turn back towards me for a little while.

10 A. Okay.

11 Q. What's your educational background?

12 A. High school.

13 Q. Where did you go to high school?

14 A. Mesa, Arizona. Mountain View High
15 School.

16 Q. Did you take any classes after high
17 school?

18 A. I did not.

19 Q. Have you ever taken any business classes?

20 A. No.

21 Q. Have you ever learned about intellectual
22 property?

23 A. No.

24 Q. Do you know what a patent is?

25 A. I do.

1 Q. Do you know what a design patent is?

2 A. I do.

3 Q. Do you know what the difference is
4 between a utility patent and a design patent? And
5 I'll pause here too. I don't remember if I said
6 this. If you don't know the answer to a question I
7 ask, you can just tell me. Because all we're
8 trying to find out today is what you know.

9 A. Yeah. I do but not fully.

10 Q. Okay.

11 A. I do, but not enough to completely give
12 you a correct answer.

13 Q. Okay. That's fair. Do you know what the
14 standard is for infringement of a design patent?

15 A. I don't.

16 Q. Do you have any background in product
17 design?

18 A. I do not.

19 Q. Have you ever taken any classes in
20 product design?

21 A. I did not.

22 Q. Do you know what CAD files are?

23 A. No.

24 Q. Do you know how to draw?

25 A. Yes.

1 Q. How do you know how to draw?

2 A. From life growing up.

3 Q. On a scale of 1 to 10, how good at
4 drawing would you say you are?

5 A. Maybe a 7.

6 Q. That's pretty good.

7 A. Yeah.

8 Q. It's probably higher than me. Do you
9 know how to sew?

10 A. I do.

11 Q. Do you have a sewing machine?

12 A. I do.

13 Q. How did you learn how to sew?

14 A. I took sewing classes.

15 Q. Have you ever sewn anything?

16 A. I have.

17 Q. What have you sewn, just as an example?

18 A. Quilts. Pillows.

19 Q. Do you have any background in marketing?

20 A. I do not.

21 Q. Have you taken any marketing classes?

22 A. No.

23 Q. Have you ever watched YouTube or TikTok
24 videos about marketing?

25 A. No.

1 Q. Do you have any background in
2 photography?

3 A. No.

4 Q. Have you ever taken any photography
5 classes?

6 A. No.

7 Q. What's your current job?

8 A. CEO of Brixley.

9 Q. Beside -- before Brixley -- we're going
10 to talk about Brixley in a minute. But before
11 Brixley, what was your current -- what was your
12 most recent job?

13 A. I worked for a restoration company.

14 Q. And when did you work there?

15 A. I started 20 -- give me a second. I
16 started 2017.

17 Q. And how long did you work there?

18 A. I quit in -- oh, heavens. Now you put me
19 on the spot here. I don't -- I can't give you an
20 exact answer. I know, but I don't know for sure.
21 So I'm going to say I don't know.

22 Q. Okay. That's fine. Was it before or
23 after you started Brixley?

24 A. I still worked there when I started
25 Brixley.

1 Q. Okay. Did you work there last year?

2 A. I did not, no.

3 Q. Okay. Did you work there the year
4 before?

5 A. No.

6 Q. So it's probably been a couple years?

7 A. Yes.

8 Q. Okay. This isn't crucial to the case.

9 A. Yeah, okay. I just don't want to give
10 you the wrong year.

11 Q. That's fine. What did you do at the
12 restoration company?

13 A. I started as a receptionist.

14 Q. Is that what you did the whole time you
15 were there?

16 A. I started as a receptionist and I moved
17 up to being the bookkeeper.

18 Q. What did you do as the bookkeeper?

19 A. I handled all of their finances.

20 Q. Did you work anywhere before that?

21 A. Yes. I worked at an ophthalmology place
22 for three weeks.

23 Q. And what did you do for the ophthalmology
24 place?

25 A. I was a receptionist.

1 Q. And did you work anywhere before that?

2 A. I did. I worked for a company called
3 Kempton Physical Therapy.

4 Q. Is that a family --

5 A. Mm-hmm. It's my dad's physical therapy
6 clinic.

7 Q. Great. What did you do there?

8 A. I was a receptionist.

9 Q. Besides Brixley, have you ever started a
10 business?

11 A. I have not.

12 Q. Let's talk about Brixley. I understand
13 you are the founder of Brixley; is that correct?

14 A. That is.

15 Q. When did you start Brixley?

16 A. 2019.

17 Q. Did you start it by yourself?

18 A. I did.

19 Q. Why did you start Brixley?

20 A. I started Brixley because I knew I was
21 going to be a mom one day and I wanted something
22 for myself.

23 Q. That's fair. That's very fair.

24 A. Yes.

25 Q. Was it your main job when you started it?

1 Or was it more of a side hustle?

2 A. It was a complete side gig.

3 Q. How did you come up with the name?

4 A. That's a good question. It was a baby
5 name I had loved for years.

6 Q. What was the first product that you
7 offered at Brixley?

8 A. Packing cubes.

9 Q. Where did those packing cubes come from?

10 A. What do you mean?

11 Q. So the design of the packing cubes. Did
12 you design them yourself?

13 A. I did.

14 Q. How did you design them?

15 A. I took what -- I don't know how to
16 explain it in an easy way. I took what I wanted in
17 a suitcase and how I wanted my suitcase to be
18 organized. And that's how I came up with it. I
19 don't know if that makes sense.

20 Q. That does make sense.

21 A. I don't know if I need to elaborate on
22 that, but...

23 Q. Yeah. Did you -- did you draw them when
24 you were designing them?

25 A. Yeah. I drew them.

1 Q. Just on paper?

2 A. Yeah. Just on paper.

3 Q. Is that how you showed your manufacturer
4 what you wanted?

5 A. Yeah.

6 Q. Did you see the designs anywhere before
7 you started drawing them?

8 A. I had seen packing cubes before, but
9 nothing that I had come up with.

10 Q. Where did the patterns come from for your
11 packing cubes?

12 A. I drew them.

13 Q. Did you draw those on paper as well?

14 A. I drew them on an iPad.

15 Q. Okay. What's your current role at
16 Brixley?

17 A. CEO.

18 Q. What are your responsibilities in that
19 role?

20 A. Everything. Social media, day-to-day, in
21 charge of employees, ordering inventory, talking to
22 my manufacturer.

23 Q. Let me ask you about some of those
24 things.

25 Social media. What do you do for social

1 media?

2 A. I post on social media every single day.
3 And I come up with content to post on social media.

4 Q. Do you post on your personal social media
5 accounts?

6 A. I do.

7 Q. Is that to promote Brixley?

8 A. Yes, but no. Yes, I do, but at the same
9 time, no.

10 Q. Can you explain that for me?

11 A. Yeah. I post on my personal about
12 Brixley because Brixley's my life. And my family
13 and friends like to see updates of Brixley, but I
14 don't do it to promote it because everyone who's on
15 Brixley is on Brixley because it's Brixley.

16 Q. Do you ever post on the Brixley social
17 media accounts?

18 A. Yes.

19 Q. Do you create that content?

20 A. I do.

21 Q. How often do you create that content
22 would you say?

23 A. Once a day.

24 Q. Once a day?

25 A. Mm-hmm.

1 Q. You mentioned day-to-day. What does that
2 mean?

3 A. For what I post?

4 Q. Well, so when you listed your list of the
5 things that you do --

6 A. Oh, sorry. I thought we were talking
7 about social media still.

8 Q. My apologies on that.

9 A. No, it's okay.

10 Q. So you mentioned day-to-day. I'm sure
11 that's a really big category, but can you give me
12 an idea of some of the things that fall in that
13 category?

14 A. What I do in a day-to-day at Brixley,
15 correct?

16 Q. Yes.

17 A. Okay. Yeah. So I come in. I start
18 helping with orders. I help restock shelves. I
19 post on social media. I interact with my
20 employees. I think that's really important. I
21 tear down boxes. I restock shelves. Yeah.

22 Q. Do you respond to e-mails?

23 A. I do not.

24 Q. Does someone else do that for you?

25 A. Yes. I respond to my personal e-mails.

1 She responds to my customer e-mails.

2 Q. Where who's the person who responds to
3 the customer e-mails?

4 A. Her name is Sydra.

5 Q. Does she work for you?

6 A. She does.

7 Q. Do you know her last name?

8 A. I'm going to botch it up. I want to say
9 it's Partain or Partain. I can't say it exactly.
10 I don't know how to pronounce it.

11 Q. That's okay. You mentioned you supervise
12 employees?

13 A. I do.

14 Q. What does that mean?

15 A. I -- I make sure they're there even
16 though they are responsible for themselves. I
17 check in every single day to make sure if they need
18 anything. I make sure they feel comfortable and
19 make sure they feel seen and wanted and feel like
20 they -- I want them to have a good work
21 environment.

22 Q. Are you their direct supervisor?

23 A. I am.

24 Q. Okay. How many employees does Brixley
25 have?

1 A. Can you elaborate on that? Because I
2 have some full-time, some part-time, some third
3 parties, like a marketing agency who's not my -- so
4 can you elaborate a little bit?

5 Q. Yeah. So that's actually really helpful.
6 So how many full or part-time employees do you
7 have?

8 A. I have one full-time employee. Her name
9 is Sydra. I have one -- I have two part-time --
10 two part-time employees, Maddy and Bethany. And
11 then obviously I'm full-time. My husband Ethan is
12 full-time. I have -- actually -- and then I also
13 have another part-time employee named Brooke.

14 I have another part-time employee, but I
15 wouldn't really consider him an employee because we
16 pay him to do analytics for us. So he's not like
17 in the warehouse.

18 Q. I'm going to take those each one at a
19 time.

20 A. Yeah. Sorry.

21 Q. What does Maddy do for you?

22 A. Maddy is our -- in our fulfillment
23 center, so she packages orders.

24 Q. What does Bethany do for you?

25 A. Bethany is the same exact. She packages

1 orders.

2 Q. What does Brooke do?

3 A. Brooke actually is -- Brooke watches my
4 child Kempton so I'm able to go to work and fulfill
5 my responsibilities.

6 Q. Is she an employee of Brixley? Or is she
7 your employee?

8 A. I guess she's my employee.

9 Q. Okay.

10 A. So, sorry.

11 Q. That's okay. And you mentioned you have
12 a part-time analyst?

13 A. Yes.

14 Q. What does he do?

15 A. He just crunches our numbers and tells us
16 what we need to order and when we need to order it
17 to make sure we are good on our inventory.

18 Q. Do you remember his name?

19 A. Kelson.

20 Q. Do you remember his last name?

21 A. Davies.

22 Q. Can you spell that?

23 A. D-A-V-I-E-S.

24 Q. You mentioned that you interact with your
25 manufacturer.

1 A. I do.

2 Q. How does that work?

3 A. I -- through WhatsApp.

4 Q. And we'll get more into those messages
5 later.

6 A. Okay.

7 Q. But what kind of interactions do you have
8 with your manufacturer? What do you talk about?

9 A. Products, invoices I need to pay,
10 samples, colors.

11 Q. Who picks the new products that Brixley
12 sells?

13 A. I do.

14 Q. Do you develop all of those products?

15 A. I do.

16 Q. Do you do that by yourself?

17 A. I do.

18 Q. Do you select colors and patterns?

19 A. I do.

20 Q. Do you do that by yourself as well?

21 A. I do.

22 Q. Do you ever outsource that?

23 A. I don't. Can I go back to that?

24 Q. Yes.

25 A. I do have someone who helps me with my --

1 with not my colors, but I have someone who draws
2 patterns for me, certain specialty -- specialty
3 patterns for me.

4 Q. Who does that for you?

5 A. Her name is Ashley Frost.

6 Q. You said she does specialty patterns?

7 A. Mm-hmm.

8 Q. What does that mean?

9 A. For example, I just launched a Halloween
10 collection and it has little ghosts on it. So she
11 draws the ghosts.

12 Q. Do you still draw some of your own
13 patterns?

14 A. I don't anymore.

15 Q. You used to?

16 A. I did.

17 Q. We talked about your employees, and you
18 mentioned that you also have some contractors?

19 A. Mm-hmm.

20 Q. What contractors does Brixley have?

21 A. Marketing agency. I know you met them.

22 Q. Is that REP Labs?

23 A. That is REP Labs.

24 Q. Yeah.

25 A. And then I have a photography team who I

1 pay to give us photo shoots, who gives us new
2 content for -- just for photos.

3 Q. What's their name?

4 A. Ambit, A-M-B-I-T, Photography.

5 Q. How long have you worked with them?

6 A. I am not sure on an exact date on that.

7 Q. Did you work with them when you first
8 started Brixley?

9 A. Not when I first started Brixley.

10 Q. Did you take all your own photos then?

11 A. I had a friend named Alice -- Allison.
12 Alice? Alice, I think. Sorry. You're like --
13 A-A-A-A Alice. Alice or Allison. I don't remember
14 her name, who took them for me, a family friend.
15 But after that, Ambit was my next photographer.

16 Q. You mentioned that you post about Brixley
17 on your personal social media; is that right?

18 A. From time to time.

19 Q. Which platforms do you post on?

20 A. I post on Instagram and I post on TikTok
21 from time to time. Not every single day. I post
22 on Instagram once -- I mean every single day, but
23 not TikTok every single day. I used to.

24 Q. And you mentioned you do that to update
25 your family and friends; is that right?

1 A. Mm-hmm.

2 Q. Do you also do that to promote Brixley in
3 general?

4 A. Not to promote Brixley, no.

5 Q. Is there ever content from your personal
6 social media that ends up getting shared to the
7 Brixley social media platforms?

8 A. Yes.

9 Q. When does that happen?

10 A. Oh, goodness. I've been pretty bad at
11 it, but I try to update my followers from time to
12 time about my life and what I do and how I've been.

13 Q. Do you ever use content from your
14 personal social media as ads for Brixley?

15 A. Yeah. Sorry.

16 Q. So, for example, let's say you post
17 something on TikTok.

18 A. Okay.

19 Q. Do you ever take that video and turn it
20 into an ad that would get, you know, published as
21 an ad on social media?

22 A. Yes. But it would be -- it would always
23 be with Brixley in mind if I was to do that.

24 Q. Do you create all that content yourself?

25 A. I do.

1 Q. Going back to your general
2 responsibilities, are you in charge of importing
3 all of Brixley's products?

4 A. I am.

5 Q. Does that include the crossbody bags?

6 A. It does.

7 Q. Do you help unbox the crossbody bags when
8 they arrive from your manufacturer?

9 A. Yes.

10 Q. Do you ever help package crossbody bags
11 to send out to customers?

12 A. Yes.

13 Q. Do you process returns?

14 A. Sometimes.

15 Q. Does someone else handle that for you?

16 A. Mm-hmm. Yes. Sorry. Yes.

17 Q. Is that Sydra?

18 A. It is.

19 Q. Do you ever create content for Brixley's
20 website?

21 A. My -- my photography team because it's
22 all professional photography on my website.

23 Q. So do they take all the photos?

24 A. They do.

25 Q. Do you write any of the content?

1 A. I do. On -- on the website, you're
2 saying? I do.

3 Q. Yes. I mention that -- so REP Labs I
4 believe said they don't handle your website. Is
5 that correct?

6 A. No. That's correct.

7 Q. So do you oversee the website?

8 A. Yeah. I created the website.

9 Q. Okay. Is that through Shopify?

10 A. Yes, it is.

11 Q. Does Brixley pay you a salary?

12 A. They do.

13 Q. Does it pay -- does Brixley pay you any
14 extra for social media posts that you make?

15 A. No.

16 Q. You mentioned Ethan. Who's Ethan?

17 A. Ethan is my husband.

18 Q. What's his role at Brixley?

19 A. Ethan's role at Brixley is all the stuff
20 I don't want to do. He is in charge of unloading
21 boxes because he's stronger than I am. He helps
22 package. And, yeah.

23 Q. Is Ethan an officer of Brixley?

24 A. I -- can you -- what do you mean by that?

25 Q. So is -- you mentioned you're the CEO.

1 A. Yeah.

2 Q. Does Ethan have a title like that?

3 A. We call him C00, but it's -- but because
4 he kind of does operations of the company.

5 Q. Does he have any ownership interest in
6 the company?

7 A. He does not. I guess he does because
8 we're married. But other than that, he does not.

9 Q. You fully own it?

10 A. I do.

11 Q. So do you have the -- are you the primary
12 decision maker at Brixley?

13 A. I am.

14 Q. Let's talk about the products that
15 Brixley sells. You mentioned packing cubes.

16 A. Mm-hmm.

17 Q. Does Brixley still sell packing cubes?

18 A. They do. We do.

19 Q. What else does Brixley sell?

20 A. Crossbody bags, key chains, luggage tags,
21 toiletry bags, tote bags, beanies, sweatshirts,
22 straps, and that's it.

23 Q. Did you select all of those products for
24 sale?

25 A. I did.

1 Q. Did you design all of those products?

2 A. I did.

3 Q. Did you draw the designs?

4 A. Not on all the products.

5 Q. For the -- can you give me an example of
6 a product where you did not draw the design?

7 A. Beanies. I didn't draw a beanie or a
8 sweatshirt.

9 Q. So how did that work when you told your
10 manufacturer what you wanted to make?

11 A. Through sweatshirts, it wasn't through my
12 manufacturer. It was through a company here in
13 Utah.

14 Q. What company was that?

15 A. The Shirt Stop.

16 Q. What do they make for you?

17 A. Just the sweatshirts.

18 Q. Is there anything else that you sell that
19 you did not draw yourself?

20 A. The beanies. The luggage tag, my
21 photography company came up with the design on that
22 one. The -- like the colorful font of that.

23 Q. Who picks the names for Brixley's
24 patterns?

25 A. Me and my employees.

1 Q. How does that process work?

2 A. We say what does this product look like?

3 And we pick a name for it.

4 Q. Which employees do you do that with?

5 A. Sydra and Maddy.

6 Q. Normally I ask this at the beginning and
7 it -- I didn't, so I apologize. I've been calling
8 you Kimberly this whole time. Is that okay?

9 A. Yes, it is.

10 Q. Okay. Do you go by Kim or is it
11 Kimberly?

12 A. I introduce myself as Kimberly, but then
13 what people call me after that is okay with me.

14 Q. Okay. That's how I am too. Kimberly,
15 have you heard of Thread Wallets?

16 A. I have heard of Thread Wallets.

17 Q. When did you first learn about them?

18 A. I first -- I'm not exactly sure when I
19 first heard about them.

20 Q. Was it before or after you started
21 Brixley?

22 A. I had heard about Thread -- I think I was
23 in junior high at the time because they were a big
24 company.

25 Q. Do you remember how you learned about

1 them?

2 A. I don't.

3 Q. That's fair. I don't remember things
4 that I learned about in junior high either.

5 A. Yeah.

6 Q. Have you ever owned any Thread products?

7 A. I have not.

8 Q. Have you ever followed Thread on social
9 media?

10 A. I have not.

11 Q. Have you ever subscribed to Thread's
12 e-mails?

13 A. I have not.

14 Q. Have you ever visits Thread's website?

15 A. No.

16 Q. Have you ever visited Thread's social
17 media platforms?

18 A. No.

19 Q. Do you know what products Thread sells?

20 A. I do.

21 Q. What products do you know of that they
22 sell?

23 A. Crossbody bags, a side sling, backpack,
24 Thread wallet, little pouches or something,
25 lanyards.

1 Q. How do you know about those things?

2 A. I go to University Mall and they have a
3 stand there.

4 Q. Have you ever visited the stand?

5 A. No. No.

6 Q. You've just seen it in passing?

7 A. Mm-hmm.

8 Q. Are you familiar with Thread's crossbody
9 bag?

10 A. I am.

11 Q. How did you first hear about it?

12 A. When I got sued.

13 Q. So you hadn't heard about Thread's
14 crossbody bag until the lawsuit was filed?

15 A. Someone had sent me their Instagram story
16 before that, saying they're copying your bag, but
17 then before that, no. And then I got sued.

18 Q. And just to be clear, are we talking
19 about the lawsuit that was filed last year?

20 A. The one in 2021.

21 Q. Okay. Are you talking about the letter
22 that was sent in 2021?

23 A. Yeah. Sorry. I know that's not a
24 lawsuit. It was the letter they sent trying to
25 scare me into it.

1 Q. Okay. So that was the first time you had
2 heard of Thread?

3 A. I had. The crossbody bag --

4 Q. Sorry. The first time you heard of the
5 cross -- just to be clear so the record is clear.

6 A. Yes. First time I heard about the
7 crossbody bag was -- was that letter. Well,
8 before -- well, the -- someone had sent me a DM
9 sending the crossbody to me in an ad that Thread
10 had and said, "They're copying your bag," and then
11 I got the sent the letter.

12 Q. Do you remember when you got that
13 Instagram?

14 A. I don't.

15 Q. And you called it a "DM." For the
16 record, can you tell me --

17 A. Sorry. A direct message.

18 Q. That's okay.

19 Kimberly, did you copy Thread's crossbody
20 bag?

21 A. I did not.

22 Q. How do you explain the similarities
23 between your bag and Thread's bag?

24 A. What do you mean by that?

25 Q. So we're going to put your original bag

1 up on the screen a little bit later.

2 A. Okay.

3 Q. And we're going to put up the letter that
4 we sent you.

5 A. Okay.

6 Q. And we're going to talk about the
7 similarities between those two products.

8 A. Okay.

9 Q. Do you think the products are dissimilar?

10 A. I do.

11 Q. What are the dissimilarities -- well,
12 let's talk specifically about the original one.
13 Again, we're going to put this up on the screen
14 later.

15 A. Okay.

16 Q. But I want to hear from you now.

17 A. Okay.

18 Q. What are the dissimilarities between your
19 original product and Thread's crossbody bag?

20 A. Credit card holders, key clasp, and the
21 logo is different. And it's a different
22 measurement. And I truly don't think they look the
23 same.

24 Q. Is there anything else about the outside
25 of the bag that you thought looked different?

1 A. Velcro, I had a Velcro attachment.

2 Straps are different.

3 Q. You mentioned a different measurement.

4 What do you mean by that?

5 A. I know that they're different
6 measurements. I know that they're not identically
7 the same measurements.

8 Q. Are you talking about the dimensions of
9 the bag?

10 A. Correct.

11 Q. How do you know that the dimensions are
12 different?

13 A. I don't know. Just because I do. I
14 don't -- what do you mean by that?

15 Q. So you said you know the measurements are
16 different for the bags.

17 A. Yes.

18 Q. Have you ever compared them?

19 A. Well, no. I don't have a Thread wallet,
20 but -- or a Thread bag. But I know that my
21 measurements are different from their measurements.

22 Q. Have you ever looked up their
23 measurements on their website?

24 A. I personally haven't. Someone else has
25 for me to have them side by side, and they're

1 different measurements.

2 Q. So someone else told you that they're
3 different measurements?

4 A. Yes.

5 Q. Do you remember who that was?

6 A. I don't.

7 Q. Do you remember when that happened?

8 A. I don't.

9 Q. Did you ask them to do that?

10 A. No.

11 Q. So sitting here today, do you have any
12 personal knowledge that the dimensions are
13 different?

14 A. Well, yes, because I looked at the two
15 measurements and I know they're different.

16 Q. What measurements did you look at?

17 A. What they -- what the person had shown me
18 on their website and what my -- what my bag is.

19 Q. So did someone print it out from the
20 website?

21 A. No. They just showed me on their phone.

22 Q. Okay. But you don't remember who that
23 was?

24 A. I don't.

25 Q. Or if you asked them to do that?

1 A. I did not ask them to do that.

2 Q. We talked about that message that you got
3 on Instagram saying -- about Thread?

4 A. Mm-hmm.

5 Q. What did you think when you saw that
6 message?

7 A. I was upset.

8 Q. What were you upset about?

9 A. To think that someone thought our product
10 looked the same enough to send it to me.

11 Q. So were you upset that your product
12 looked like Thread's? Is that what you're saying?

13 A. No. I'm upset -- I was upset that I had
14 never seen it before, and so I had no idea that
15 they had a bag that looked similar to mine.

16 Q. We're going to get back to the crossbody,
17 but I just want to make sure I have the rest of
18 just a general background here.

19 Have you ever discussed Thread with
20 anyone besides your lawyer?

21 A. Yes.

22 Q. Who have you talked to about Thread?

23 A. My husband.

24 Q. Is that Ethan?

25 A. That is Ethan. One of my good friends,

1 Lindsay. A few family members.

2 Q. What have you talked about with Lindsay?

3 A. Back in 2021, I sent her the letter that
4 they sent me.

5 Q. And you've talked to family members about
6 it?

7 A. Mm-hmm.

8 Q. What have you talked about with your
9 family?

10 A. Let them know that we were getting sued.

11 Q. What did you tell them about the case?

12 A. That we were getting sued.

13 Q. Did you tell them why?

14 A. No.

15 Q. You just told them, "We got sued"?

16 A. Mm-hmm.

17 Q. Did they ask you anymore about it?

18 A. No.

19 Q. Have you ever talked to REP Labs about
20 Thread?

21 A. Yes. We let them know that we were going
22 to be in a lawsuit.

23 Q. Have you said anything else to REP Labs
24 about Thread?

25 A. Hm-mm. No. Sorry. No.

1 Q. Has anyone else besides me ever asked you
2 if you copied Thread's bag?

3 A. No.

4 Q. Has anyone ever asked you if Thread
5 copied your bag?

6 A. People on my Instagram have on posts. I
7 don't know what posts.

8 Q. And we will get to those later.

9 A. Okay.

10 Q. Has anyone else ever asked you directly?

11 A. No.

12 Q. Would you consider Thread to be one of
13 Brixley's competitors?

14 A. I guess so.

15 Q. Is Thread's crossbody bag compete with
16 Brixley's crossbody bag?

17 A. I don't think so.

18 Q. You don't think so?

19 A. I don't.

20 Q. Why not?

21 A. Because I think ours is better. And we
22 have a completely different market, completely
23 different customers.

24 Q. Tell me about that. How does your market
25 and customers differ from Thread's?

1 A. In a lot of ways. I feel like when you
2 see my customers, they range from age 5 to 95. You
3 can be old. You can be fat. You can be skinny.
4 You can be tall. You can be short. You can be
5 anything you want to be.

6 Threads is you have to be skater, you
7 have to be cool, you have to be from Hawaii, you
8 have to be a certain look.

9 Q. You mentioned that you create and post
10 content on Brixley's social media pages; is that
11 right?

12 A. Yes.

13 Q. Does anyone else help you with that?

14 A. No.

15 Q. You do that I all by yourself?

16 A. I do.

17 Q. Do you -- does anyone at Brixley review
18 third party posts that tag Brixley?

19 A. What do you mean by that?

20 Q. So, for example, if I go on Instagram and
21 I leave a comment, not on Brixley's page but
22 someone else's, saying "@brixleybags" -- which I
23 understand is Brixley's handle; is that right?

24 A. Correct.

25 Q. Does the Brixley Bags Instagram account

1 get a notification that someone tagged it?

2 A. It should. Instagram should notify.

3 Q. Who gets that notification?

4 A. I do, but my notifications aren't on, so
5 it just goes into the notification center of
6 Instagram.

7 Q. Do you ever look at those notifications?

8 A. From time to time, but not daily, no.

9 Q. Do you ever check them just to see if
10 anyone's saying something that needs to be
11 responded to?

12 A. Yes.

13 Q. I mean, for example, I've seen this on
14 social media. Someone will complain about
15 something and then the brand will respond, right?

16 A. Mm-hmm.

17 Q. Is that right?

18 A. Yes.

19 Q. Do you ever do that?

20 A. From time to time, yes.

21 Q. How often would you say you see those
22 tags?

23 A. Once a week.

24 Q. I'm going to take this in two buckets.

25 So first we're going to talk about Brixley's social

1 media posts, okay?

2 A. Okay.

3 Q. Do you ever see tags -- comments on
4 Brixley's social media posts or their social media
5 ads that reference Thread?

6 A. I used to more. I don't anymore, but I
7 used to.

8 Q. You used to?

9 A. Mm-hmm.

10 Q. When did you see those?

11 A. I'm not sure.

12 Q. Do you remember what you saw?

13 A. People would tag Thread Wallets or people
14 would say Thread Wallets is copying me or people
15 would say I'm copying Thread Wallets.

16 Q. What did you do when you saw those
17 comments?

18 A. I'm not sure.

19 Q. You don't remember?

20 A. I don't.

21 Q. What happened to those comments?

22 A. They're probably still there.

23 Q. So if I pulled up the Brixley's social
24 media right now, I could go in and find those
25 comments?

1 A. If you looked hard enough, I bet you
2 could. It was years ago.

3 Q. It was years ago?

4 A. Mm-hmm.

5 Q. Do you know how long ago it was?

6 A. I don't.

7 Q. Did you keep any record of those
8 comments?

9 A. We had a couple screenshots.

10 Q. Do you know if you produced those?

11 A. Yes, we did. Sorry. I didn't know what
12 you mean by produce, but, yes, I do now know what
13 you mean by produced.

14 Q. All right. There's a lot of lingo.

15 A. There is.

16 Q. I'm going to go to my second bucket now,
17 which is Thread social media posts and ads.

18 A. Okay.

19 Q. Have you ever seen any tags of Brixley
20 being tagged on Thread's social media posts or ads?

21 A. A few times.

22 Q. Do you remember about how many you've
23 seen?

24 A. I have not. I do not.

25 Q. When did you see them?

1 A. I do not know.

2 Q. Was it in the last year?

3 A. No.

4 Q. More than a year ago?

5 A. Mm-hmm. Yes.

6 Q. Was it before the lawsuit was filed?

7 A. No.

8 Q. Was it before and after?

9 A. I don't remember.

10 Q. You don't think you've seen any for a
11 while though?

12 A. I have not.

13 Q. Do you know why that is?

14 MR. TODD: Objection. Calls for
15 speculation.

16 You can answer the question.

17 THE WITNESS: I can, you say?

18 MR. TODD: Yeah.

19 THE WITNESS: Because our bags are
20 completely different.

21 Q. (BY MS. FRANSEN) What did you do when
22 you saw those -- well, actually, let me back up.
23 Do you remember what those comments said?

24 A. I do not.

25 Q. What did you do when you saw those?

1 A. Nothing.

2 Q. Did you delete any of the posts from
3 Brixley's Instagram account from March of this
4 year?

5 A. Delete my posts?

6 Q. Yes.

7 A. No.

8 Q. As far as you know, they're still there?

9 A. Yes.

10 Q. Okay. Do you understand what I'm talking
11 about when I mention the Brixley crossbody bag?

12 A. I do.

13 Q. You've also referred to it as the
14 "crossbody sling"?

15 A. Yes.

16 Q. Those are the same bag?

17 A. They are.

18 Q. Okay. And I understand that there have
19 been two versions of the bag; is that correct?

20 A. That is correct.

21 Q. Okay. We're going to introduce
22 Exhibit-2.

23 A. Okay.

24 Q. Give me one minute.

25 THE WITNESS: Look how handsome you are,

1 babe.

2 (Exhibit-2 marked.)

3 THE WITNESS: That is a Coastal Crossbody
4 Sling.

5 Q. (BY MS. FRANSEN) What's the Coastal
6 Crossbody Sling?

7 A. That is our product.

8 Q. Is this a listing from your website?

9 A. Not our current website, no. That is an
10 old crossbody that we do not sell anymore.

11 Q. How do you know that?

12 A. Because it was discontinued.

13 Q. Right. But how do you know that this
14 listing that we're looking at is an old one?

15 A. Because that's not my new design.

16 Q. Okay. Does this look like an accurate
17 copy of your old website?

18 A. This does.

19 Q. Who created this webpage?

20 A. I did.

21 Q. Who took the photographs?

22 A. Alice.

23 Q. Who drafted the ad copy?

24 A. What do you mean?

25 Q. There's a paragraph under there --

1 A. Oh, I did that. I wrote that.

2 Q. Okay. And just to be clear for the
3 record, that's the paragraph that says -- it starts
4 with "Our crossbody sling bags are ready for any
5 adventure you are."

6 A. Yep.

7 Q. You wrote that?

8 A. Mm-hmm.

9 Q. Okay. How did you decide what to say
10 there?

11 A. I don't know.

12 Q. And who was in the marketing photos?

13 A. My husband Ethan and me.

14 Q. We talked a little bit about this
15 earlier. I want to talk about how you designed the
16 bag. Because I understand your testimony earlier
17 is that you designed this bag; is that correct?

18 A. I did. Mm-hmm.

19 Q. Okay. How did you design it?

20 A. I wanted to create a crossbody that could
21 be worn multiple different ways and that could hold
22 my credit cards, my phone, and my keys all in one
23 place instead of having five different types of
24 bags.

25 Q. When did you start designing it?

1 A. I'm not sure on the date.

2 Q. Do you know what year it was?

3 A. I don't know exact year.

4 Q. Was it before or after you started
5 Brixley?

6 A. After I started Brixley.

7 Q. Had you started selling packing cubes at
8 that point?

9 A. Yes.

10 Q. Did you see this design somewhere before
11 you started selling it?

12 A. No.

13 Q. Did you draw the design?

14 A. I did draw the design, yes.

15 Q. Did you draw it on an iPad or on a piece
16 of paper?

17 A. A piece of paper.

18 Q. Do you still have that piece of paper
19 somewhere?

20 A. I do not.

21 Q. Did you show that piece of paper to your
22 manufacturer?

23 A. We went back and forth sending pieces of
24 paper and cardboard cutouts.

25 Q. You sent cardboard cutouts?

1 A. Mm-hmm.

2 Q. How did you send the pieces of paper to
3 your manufacturer?

4 A. In the mail.

5 Q. Did you send cardboard cutouts in the
6 mail?

7 A. I did.

8 Q. Did you talk to your manufacturer through
9 videoconference about it?

10 A. I did.

11 Q. Did you talk to your manufacturer through
12 WhatsApp?

13 A. I did.

14 Q. Let's talk about some of the specific
15 design elements. Why did you pick that specific
16 shape for this bag?

17 A. I don't know.

18 Q. You don't know?

19 A. Hm-mm.

20 Q. Were you inspired by anything?

21 A. No.

22 Q. Why did you decide to put a zipper pocket
23 on the front?

24 A. So I could hold my coins.

25 Q. Why did you decide to do a flat pocket?

1 A. How -- what other kind of pocket would
2 you do?

3 Q. So, for example, yesterday I was at the
4 store and I saw a pocket that sticks out from the
5 bag a little bit. Have you seen those?

6 A. Okay. I have seen those.

7 Q. Why did you decide to do a flat pocket
8 instead of something like that?

9 A. Because I think those are ugly.

10 Q. That's fair. You see that little logo
11 patch on the front right corner of the bag?

12 A. I do.

13 Q. Why did you decide to put a logo patch on
14 there?

15 A. Because I need my logo on the bag.

16 Q. Why did you decide to put it in the
17 corner?

18 A. I decided to put it in the corner because
19 it looked best in the corner.

20 Q. Did you try it in different corners?

21 A. Yeah, I did. And it didn't look -- that
22 PU leather stamp did not look good.

23 (Reporter request for clarification.)

24 Q. (BY MS. FRANDSEN) That actually was
25 going to be my question, is what is PU leather?

1 A. I don't know what "PU" stands for, but
2 that's how my manufacturer refers to it, is "PU
3 leather." I don't know if that's the material they
4 use, but I know it's a faux leather. But I don't
5 know what "PU" stands for. That's just how we --
6 how she says it.

7 Q. And you're talking about that logo patch
8 is made of PU leather?

9 A. Correct.

10 Q. Okay. How did you decide to do a PU
11 leather patch instead of, for example, now you
12 embroider it on your bag.

13 A. Mm-hmm.

14 Q. So how did you decide to do a patch?

15 A. I wanted to do a patch because that's
16 what's on our packing cubes.

17 Q. Okay. What color was the patch on your
18 packing cubes?

19 A. It depends which packing cube it was.

20 Q. You decided to do black on ones?

21 A. Yeah. I did decide to do black on these
22 ones.

23 Q. Why did you do black?

24 A. Because you wouldn't be able to see white
25 on this one very well.

1 Q. Did they have other color options for
2 you?

3 A. Oh, yeah. Any color I want.

4 Q. Why did you go with black then?

5 A. Because black is what the zipper is and
6 what the strap is.

7 Q. If you look in the smaller photos, you
8 can see the back of the bag. Do you see that?

9 A. I do.

10 Q. Do you know what a D ring is?

11 A. I do.

12 Q. What is a D ring?

13 A. A D ring is a universal ring that people
14 use to attach straps to.

15 Q. So looking at that picture, do you see
16 those loops on the bag?

17 A. I do.

18 Q. Are those D rings?

19 A. Those are.

20 Q. How did you decide to do a D ring?

21 A. It's a universal standard ring.

22 Q. Is that what everyone uses?

23 A. It is.

24 Q. Have you ever seen anyone use something
25 different?

1 A. Actually, no, I haven't.

2 Q. Have you ever seen someone use a
3 rectangle?

4 A. No.

5 Q. Have you ever seen someone use a circle?

6 A. No.

7 Q. Have you ever seen someone use a little
8 loop?

9 A. No.

10 Q. So everyone uses the D ring?

11 A. Not from what I've seen -- from what I've
12 seen, yes. I don't go and look at different bags
13 to see what other people use.

14 Q. You've never looked at another bag for
15 inspiration?

16 A. No.

17 Q. You've never gone into a store and said,
18 hey, that looks cool, I should try doing that?

19 A. Not to copy it, but I have gone to other
20 stores to see what bags they have. Not
21 specifically to see what bags, but I browse and
22 look.

23 Q. So you have seen other bags?

24 A. I've seen other bags. I think anyone
25 has.

1 Q. Okay. And you've never seen anyone use
2 anything other than a D ring?

3 A. No, I haven't.

4 Q. Okay. There's three D rings on the back
5 of this bag; is that right?

6 A. There is.

7 Q. How did you decide to do three?

8 A. I don't know. Can I ask a question?

9 Q. I don't have to answer it, but if you're
10 asking me to clarify.

11 A. No. Then never mind.

12 Q. Okay. Because it's not my deposition.

13 A. Yeah.

14 Q. So do you remember how you decided to
15 place the D rings on the back of the bag?

16 A. How I decided to place them?

17 Q. Mm-hmm. Yes.

18 A. No.

19 Q. Why do you want the D rings on the back
20 of your bag?

21 A. So you can be able to wear it as a
22 crossbody and over your shoulder.

23 Q. Could you wear it as a crossbody if the
24 top D rings were on the side of the bag?

25 A. What do you mean?

1 Q. So if I took those top two D rings and
2 instead of having them on the back of the bag, if I
3 put them on the side by where the zipper is, could
4 I use the bag as a crossbody?

5 A. You'd have to show me that. I'm not
6 understanding completely.

7 Q. Okay. Well, because I understand from
8 your testimony, in order to change this bag around,
9 you have to have the D rings on the back; is that
10 right?

11 A. Correct.

12 Q. Okay. And how did you decide to put a
13 third D ring on the bottom of the bag?

14 A. So you can wear it as a crossbody.

15 Q. Where did you get that idea?

16 A. What do you mean?

17 Q. So did it just come to you? How did you
18 decide to put it there?

19 A. Because I wanted a -- I wanted to have a
20 bag that could be worn as a crossbody but then also
21 a side bag, so I knew that it had to go there to be
22 able to wear it as a crossbody.

23 Q. Have you seen any bags before that can --
24 actually, you know what? We'll talk about it
25 later.

1 There's also a back pocket on this bag;
2 is that right?

3 A. That is.

4 Q. How did you decide to put a back pocket
5 on this bag?

6 A. I wanted to put my phone somewhere.

7 Q. Were you not going to put your phone on
8 the front pocket?

9 A. No. My coins go in the front pocket.

10 Q. And there's one more logo patch on the
11 back. Do you see that?

12 A. I do.

13 Q. How did you decide -- well, two things.
14 Why did you want to put another logo patch on the
15 back of your bag?

16 A. So that you can see it from both, if it
17 was flipped from upside down, you could see that it
18 was Brixley. And from the front, you could see
19 that it was Brixley.

20 Q. Does anyone ever wear it backwards like
21 that?

22 A. They do.

23 Q. And how did you decide to put it in that
24 spot on the back of the bag?

25 A. I thought that looked best. The D

1 ring -- the D ring was right there and so I wasn't
2 going to put it in the corner. And the Velcro was
3 right there, so I didn't want to -- I thought that
4 was the best place.

5 Q. Did you draw different versions of this
6 bag?

7 A. What do you mean by that?

8 Q. As you mentioned earlier, that you tried
9 the front logo in different places.

10 A. Yeah.

11 Q. Did you draw it different times?

12 A. I drew it in different places, but I
13 thought that would be the best place.

14 Q. How did you decide on the dimensions of
15 the bag?

16 A. I measured my phone and my credit cards
17 and I thought that would be the best measurement to
18 be able to hold my phone and everything I needed
19 but still be compact.

20 Q. Did you decide to put credit cards in up
21 front?

22 A. What do you mean?

23 Q. Credit card holders.

24 A. Yeah.

25 Q. Let me back up. I understand there are

1 credit card holders inside the bag; is that right?

2 A. There are. Yes.

3 Q. Are there credit card holders inside the
4 original one?

5 A. Yes.

6 Q. At what point in the design process did
7 you decide to put credit card holders in there?
8 Was it at the beginning?

9 A. Always.

10 Q. It was always?

11 A. Mm-hmm.

12 Q. So the first time you sat down to draw
13 this bag, you said to yourself, I want to put
14 credit card holders in here; is that right?

15 A. That is correct.

16 Q. Do you remember when you first spoke to
17 your manufacturer about the crossbody bag?

18 A. I do not.

19 Q. Do you remember whether the first
20 conversation took place over the phone or through
21 WhatsApp?

22 A. I do not.

23 Q. Do you remember when you first sent the
24 pictures?

25 A. I do not.

1 Q. Do you remember when you first had a
2 finished sample of the bag?

3 A. I do not.

4 Q. Was it -- do you remember how long before
5 you offered it for sale that you had a finished
6 sample?

7 A. I do not.

8 Q. Do you know how long it took you to
9 design the bag?

10 A. I do not.

11 Q. When did you stop selling this version of
12 the bag?

13 A. I can't give you an exact day. I don't
14 remember the exact day.

15 Q. Do you remember approximately?

16 A. I know it was after we got sent a letter.

17 Q. That was the letter from Thread?

18 A. That is.

19 Q. Do you still have any samples of this bag
20 anywhere?

21 A. I do not.

22 Q. Do you know what happened to them?

23 A. I don't. I sold them all out.

24 Q. You didn't keep any?

25 A. No.

1 Q. Okay.

2 A. I might have one at home, but not -- I
3 don't keep it to keep it. But, I mean, maybe in a
4 downstairs storage. I don't know.

5 Q. And you don't think you have more than
6 one?

7 A. No.

8 MR. TODD: I think we've been going for
9 about an hour. Do we want to break soon? Maybe
10 get some air flow for a second.

11 MS. FRANDSEN: It's up to you guys. How
12 are you doing?

13 THE WITNESS: I would like a break, yeah.

14 MS. FRANDSEN: Okay. Let's take a break.

15 (Off the record from 10:08 a.m. to
16 10:16 a.m.)

17 Q. (BY MS. FRANDSEN) Kimberly, do you
18 understand that you're still under oath?

19 A. I do.

20 Q. Okay. Let's look at Exhibit-3, which
21 I've just put up on the screen.

22 (Exhibit-3 marked.)

23 Q. (BY MS. FRANDSEN) Do you recognize this?

24 A. I do.

25 Q. What is this?

1 A. Coastal Crossbody Sling.

2 Q. Is this your current version?

3 A. This is.

4 Q. Does this look like a -- well, let me
5 back up.

6 A. Sorry. I'm not even slowing down. My
7 bad. I'm going to try to be better.

8 Q. Is this a copy of your website?

9 A. Yes.

10 Q. Or a page from your website, I guess?

11 A. Yes.

12 Q. Does this look like a true and correct
13 copy?

14 A. This does.

15 Q. Who created this page?

16 A. I did.

17 Q. Who took the photos for this page?

18 A. Ambit.

19 Q. Who wrote that paragraph or that blurb I
20 guess starting with "Our crossbody sling bags are
21 ready for any adventure you are"?

22 A. I did.

23 Q. Did you update this from the previous
24 version?

25 A. I did.

1 Q. Why did you update it?

2 A. I'm not sure.

3 Q. Can you wear this bag as a mini backpack?

4 A. Yes, you can.

5 Q. Is there a picture of it up there being
6 worn as a mini backpack?

7 A. There's not, no.

8 Q. Why not?

9 A. I probably didn't upload it on there.

10 Q. If someone comes to this page and comes
11 down here and clicks the "Add to cart" button, does
12 this bag get added to their cart?

13 A. Yes.

14 Q. How many straps does it come with?

15 A. One.

16 Q. What would they need to do to convert
17 this bag to a mini backpack?

18 A. They can either put it through the loops
19 on the very back or they can buy an extra strap.

20 Q. Why doesn't the bag come with two straps?

21 A. Because there's a lot of people who don't
22 want to wear it as a backpack, but there are a lot
23 of people who do. Plus, it's more money for me.

24 Q. That's fair. Who designed this version
25 of the bag?

1 A. I did.

2 Q. When did you start considering -- let me
3 back up.

4 So I understand this bag has some
5 modifications from the original bag, is that right?

6 A. That is.

7 Q. When did you start considering those
8 modifications?

9 A. When we got the letter from Thread
10 Wallets.

11 Q. Was that the cease and desist in 2021?

12 A. That was.

13 Q. Why did you start considering
14 modifications to your bag?

15 A. Because we didn't want a lawsuit.

16 Q. Did you think your bag was similar to
17 Thread's at that time?

18 A. No. But I knew I could make it better.

19 Q. So if you didn't think your bag was
20 similar, why did you change it?

21 A. Because they were going to sue us if we
22 didn't. But here we are.

23 Q. How did you design these modifications?

24 A. I just thought it looked better.

25 Q. Walk me through your process. What did

1 you do to change this bag?

2 A. I changed the PU leather strap -- I mean,
3 sorry. The PU leather logo on the right-hand side
4 because I didn't like it there because -- sorry. I
5 shouldn't say I didn't like it there. I didn't
6 like the PU leather because it was fraying on the
7 sides. And so I wanted something that would not
8 fray or would not come up, and so I did embroidery
9 because that won't come up, that won't pop off. I
10 changed -- I added a D ring on the back because I
11 had left-handed people who wanted to wear the bag
12 the other way, but when they're left-handed, the
13 zipper was on the right -- the right side or left
14 side, so it was harder for them to open it. So I
15 wanted it to be able to be worn on your chest on
16 your left side or your right side.

17 I added the two fabric straps on the back
18 because I wanted it to be worn as a fanny pack.

19 Q. We'll talk about some of those changes in
20 just a second, but I still want to know what your
21 process was for actually designing these
22 modifications. What did that look like?

23 A. I wanted to add more ways you could wear
24 it.

25 Q. So did you start with this version of the

1 bag and then think to yourself, how can I change
2 it?

3 A. I had my old version of the bag and
4 thought what could I do to make this even better?

5 Q. Did you take suggestions from anyone?

6 A. No.

7 Q. Did you come up with everything yourself?

8 A. I did.

9 Q. Is there anything else that you changed?
10 And I can go back to the original one if that
11 helps.

12 A. No. I changed the logo embroidery on the
13 front and back. I changed -- I put the Velcro
14 pocket lower. I added the two fabric straps on the
15 back. And I added another D ring onto it.

16 Q. Had you seen a bag before that had four
17 connection points?

18 A. I had not.

19 Q. You've never seen one?

20 A. No.

21 Q. Have you ever seen a bag that had the
22 connection points attached to the back like that?

23 A. No.

24 Q. You mentioned the fabric straps on the
25 back. Are you talking about the fanny pack loops?

1 A. I am.

2 Q. Those are the loops at the top of the
3 bag?

4 A. Yes.

5 Q. Why did you add those?

6 A. Because I wanted it to be worn as a fanny
7 pack.

8 Q. Could you not turn the original one into
9 a fanny pack?

10 A. You could, but the strap -- I'll be
11 honest with you, it was too big for me with -- if
12 you didn't have it through the loops. And so I
13 wanted it to be able to be worn on smaller people.

14 Q. Do you know if anyone just attaches the
15 strap to a D rings to turn it into a fanny pack
16 even on the -- this version of the bag?

17 A. Some people do.

18 Q. You've seen that?

19 A. I have.

20 Q. Okay. Did you make any other changes to
21 the bag that you can remember?

22 A. No.

23 Q. When did you finish designing this
24 version of the bag?

25 A. I can't recall.

1 Q. Was it sometime in 2021?

2 A. I can't recall.

3 Q. Do you sell customized versions of this
4 crossbody bag?

5 A. No, I don't.

6 MS. FRANDSEN: Bud, let me know if you're
7 not getting these exhibits.

8 MR. TODD: I've been getting them all so
9 far. Are we going to Exhibit-4 now?

10 (Exhibit-4 marked.)

11 Q. (BY MS. FRANDSEN) Great. Yeah. So we
12 are going to introduce Exhibit-4 to the record. Do
13 you see that up on the screen?

14 A. I do.

15 Q. Have you ever seen this document before?

16 A. Yes.

17 Q. Do you know what this is?

18 A. "Defendant Brixley Bags LLC's Response to
19 Thread Wallets LLC's First Set of Interrogatories."

20 Q. That's okay. You did good. So if we
21 scroll down, you can see a list of interrogatories
22 with --

23 A. Oh, interrogatories.

24 Q. That's okay. We just call them "rogs."
25 If you want to do that, that's fine.

1 A. Okay.

2 Q. Do you see that list of interrogatories
3 with responses?

4 A. I do.

5 Q. Did you help draft these responses?

6 A. I did.

7 Q. Do you remember which ones you helped
8 draft?

9 A. All of them.

10 Q. Let me know if you need me to make it
11 bigger.

12 A. That should be okay.

13 Q. Okay. I'm just going to ask you about
14 one of these.

15 A. Okay.

16 Q. On this document.

17 A. Okay.

18 Q. If you look at Interrogatory No. 1, it
19 says "Identify all persons involved in the design
20 and development of each accused product." Do you
21 see that?

22 A. I do.

23 Q. Do you remember what "accused product"
24 means?

25 A. I don't.

1 Q. If I represent to you that it was
2 Brixley's crossbody bag, does that sound familiar?

3 A. Yes.

4 Q. Okay. Your response there -- makes an
5 objection. Don't worry about that part. And then
6 it says "Brixley identifies Ethan O'Connell and
7 Kimberly O'Connell." Do you see that?

8 A. I do.

9 Q. So this lists both you and Ethan, right?

10 A. Mm-hmm. Yes. Sorry. Yes.

11 Q. And your testimony earlier, you said that
12 you designed the bag by yourself. Is that still
13 your testimony after seeing this interrogatory
14 response?

15 A. It is, because -- it's hard because Ethan
16 is my husband and I talk to him about a lot of
17 things, and he's -- he's there. He's my right hand
18 man, but I'm the one who created it. But he's -- I
19 kind of involve him with everything because he's my
20 husband. And so -- but, no, I created the bag.

21 Q. Okay. How did you involve him?

22 A. I let him know what I thought, my
23 thoughts, what I liked, what I didn't like, what I
24 should change, what I wanted to change, and he was
25 just supporting me.

1 Q. Did you talk to him throughout the
2 process of developing your crossbody bag?

3 A. Yes, because he's my husband, but he
4 wasn't involved in it.

5 Q. Did he give you any feedback or
6 suggestions?

7 A. Yes, but just in a supporting manner.
8 Nothing to change my views on anything.

9 Q. He just told you you were doing a great
10 job?

11 A. Exactly.

12 Q. That's what husband's are supposed to do.

13 A. Exactly.

14 Q. We're going to introduce Exhibit-5.
15 (Exhibit-5 marked.)

16 Q. (BY MS. FRANDSEN) Kimberly, do you
17 recognize this document?

18 A. I do.

19 Q. What is this?

20 A. The -- I don't even want to read it.
21 Defendant Brixley Bags' response to Thread
22 Wallets -- whatever you call them.
23 Interrogatories. What did you call them?

24 Q. That's okay. They're interrogatories.
25 You see that it says "supplemental

1 response"?

2 A. Yes.

3 Q. Do you understand that that supplements
4 the responses that we just looked at?

5 A. Yes.

6 Q. Okay. We are going to look at
7 Interrogatory No. 2. Did you help draft these
8 supplemental responses?

9 A. I did.

10 Q. Do you remember which ones you helped
11 draft?

12 A. All of them.

13 Q. Okay. Let me go back to this actually.
14 So going back to Exhibit-4, do you see this
15 verification page at the bottom?

16 A. Yes.

17 Q. And this basically says "I'm authorized
18 to make this verification," et cetera, and then
19 it's signed "Ethan O'Connell." Do you see that?

20 A. Yep. I do.

21 Q. I don't want to know anything your lawyer
22 told you or that you told your lawyer, but outside
23 of that, do you remember why Ethan signed this
24 instead of you?

25 A. I don't.

1 Q. Okay. All right. Going back to
2 Exhibit-5. Interrogatory No. 2. Interrogatory No.
3 2 says "Explain the history of the design and
4 development of the accused products and any
5 predecessor products if applicable." Do you see
6 that?

7 A. I do.

8 Q. Again, skip the objection, and it says
9 "In 2019, Brixley was looking to create a single
10 bag that could be used in a variety of different
11 ways, eliminating the need for multiple bags." Do
12 you see that?

13 A. I do.

14 Q. Is that accurate?

15 A. It is.

16 Q. So did you start designing the bag in
17 2019?

18 A. Yeah, I did.

19 Q. What steps did you take to start
20 designing it in 2019?

21 A. I'm not sure.

22 Q. You don't remember?

23 A. I don't.

24 Q. You just remember that you started?

25 A. Mm-hmm. Yes.

1 Q. What makes you think that you started
2 designing it in 2019?

3 A. Because that's when I started getting all
4 the ideas for my company.

5 Q. How did that work?

6 A. I -- like I said before, I wanted to do
7 something for myself when I was a mom, and so I
8 wanted to create a company.

9 Q. Did you come up with a list of products
10 you wanted to sell?

11 A. I did, yes. I wanted it to be a travel
12 brand.

13 Q. What was on that list?

14 A. What I sell right now.

15 Q. Everything you sell right now?

16 A. Not everything. I didn't know I was
17 going to do beanies and sweatshirts.

18 Q. But crossbody bags was on that list?

19 A. It was, yes.

20 Q. Did you think specifically about
21 crossbody bags or was it bags in general?

22 A. It was bags in general, but I wanted to
23 start with the crossbody bag.

24 Q. Why did you want to start with the
25 crossbody bag?

1 A. Because it's what I wanted at the time.

2 Q. How would you define a crossbody bag?

3 A. A crossbody bag, you can -- it crosses
4 your body and it's a bag.

5 Q. So the end of this paragraph -- well,
6 let's go to the second-to-last sentence in this
7 paragraph. It says "The Brixley bag was the result
8 of experiences Kimberly had traveling. Upon
9 recognizing the need for organization during travel
10 and daily activities, Kimberly conceived of a bag
11 that had enough storage for various items." Do you
12 see that?

13 A. Correct.

14 Q. So it says there it was a result of
15 experiences you had traveling. What were those
16 experiences?

17 A. I traveled my entire life and so I wanted
18 a bag that I can carry my phone, my wallet, my
19 keys, everything all in one without having to have
20 five different bags.

21 Q. And I'm just going to scroll down to show
22 you that this is the end of the response. I'm not
23 trying to hide anything from you. I just want it
24 big enough that you can see it.

25 A. Okay.

1 Q. So then the supplemental response says
2 "Brixley supplements this response stating that in
3 2019, while on a trip, Kimberly became frustrated
4 with the need to have multiple bags. Kimberly
5 conceived of a bag that could serve a variety of
6 functions, eliminating the need for multiple bags
7 and could be worn in a variety of ways." Do you
8 see that?

9 A. I do.

10 Q. Do you remember -- reading that, do you
11 remember when you conceived of that bag?

12 A. I don't.

13 Q. What did you mean when you said you
14 conceived of it?

15 A. I -- I'm not sure.

16 Q. There's also a sentence at the end there
17 that says "Ethan assisted Kimberly in reviewing the
18 designs of the bags." Do you see that?

19 A. I do.

20 Q. This refers to designs, plural, and bags,
21 plural. Is that right?

22 A. Yes.

23 Q. Were there multiple bag options?

24 A. I think I'm talking about like packing
25 cubes and the crossbody. So the bags that I had.

1 Q. Okay. So there was only ever one design
2 of the crossbody?

3 A. No. There was multiple designs, but I
4 came -- but the one that I wanted the most -- that
5 I liked the most was the one I came up with.

6 Q. What other designs did you look at for
7 the crossbody?

8 A. I can't recall.

9 Q. Did you create all those designs?

10 A. Did.

11 Q. Did you draw them?

12 A. I did not.

13 Q. Did you just conceive them in your head?

14 A. Mm-hmm. Yes.

15 Q. How did Ethan review those?

16 A. Ethan reviewed the end bag, the final
17 design bag. Obviously he didn't review the ones in
18 my head.

19 Q. Did he review the different drafts of the
20 crossbody bag?

21 A. Not all of them, no.

22 Q. Did he review some of them?

23 A. Some of them.

24 Q. Do you remember when that was?

25 A. I don't.

1 Q. Was that early in the process?

2 A. I don't recall.

3 Q. You just remember he saw them?

4 A. Mm-hmm. Yes.

5 Q. Did you show him the paper copies?

6 A. I did.

7 Q. And you don't have those drafts anymore?

8 A. I don't.

9 Q. I'm going to introduce one more exhibit.

10 A. Okay.

11 Q. This is going to be Exhibit-6.

12 (Exhibit-6 marked.)

13 THE WITNESS: Okay.

14 Q. (BY MS. FRANDSEN) Kimberly, have you
15 ever seen this before?

16 A. Probably. I've seen a lot of documents.
17 I can't recall completely.

18 Q. Yeah. That's okay. So you can see at
19 the top, it says Bryan B. Todd, KB&A. Do you see
20 that?

21 A. I do.

22 Q. Who's Bryan B. Todd?

23 A. My lawyer.

24 Q. Okay. And then there's an address line
25 at the top there that says "David Johnson and

1 Brittany Frandsen." This is going to be your real
2 test, but do you remember who Brittany Frandsen is?
3 That's me, just so you know.

4 A. That's you. Okay.

5 Q. Sometimes people introduce themselves to
6 me and I forget their name right away. So I'm not
7 trying to do that to you. I'm just trying to show
8 you what this is.

9 A. Okay.

10 Q. So this looks like a letter from your
11 lawyer to myself and my colleague David Johnson.
12 Does that sound right?

13 A. It does.

14 Q. Okay. We're going to scroll down.
15 There's a heading on this letter that says
16 "Interrogatory No. 2 and RFP Nos. 6 and 7." Do you
17 see that?

18 A. I do.

19 Q. Okay. Just as a reminder, we were just
20 looking at the response to Interrogatory No. 2 on
21 this previous exhibit, correct?

22 A. Yes.

23 Q. Okay. There's a couple more details in
24 this letter that are not in your supplemental
25 response, so we're going to talk about those.

1 A. Okay.

2 Q. The first full paragraph -- well,
3 actually, no. It's -- the paragraph after that
4 first sentence, it says "Kimberly frequently used
5 her Fawn Design mini backpack because it was able
6 to function as a backpack or a side purse." Do you
7 see that?

8 A. I do.

9 Q. What's a Fawn Design mini backpack?

10 A. Fawn Design is a company that sells mini
11 backpacks.

12 Q. Is their name Fawn?

13 A. Yeah. Yes.

14 Q. Do you know if they're still in business?

15 A. I believe they are.

16 Q. What did the Fawn Design mini backpack
17 look like?

18 A. It was black and it was like -- like
19 that. I don't know.

20 Q. You say here that it was able to function
21 as a backpack or a side purse.

22 A. Mm-hmm.

23 Q. How did it function as a backpack or a
24 side purse?

25 A. It was a long time ago. It could be worn

1 over the shoulder. And then it was attached at the
2 bottom to where you can pull out the shoulder strap
3 and you can wear it as a backpack.

4 Q. So there was straps that were attached to
5 the bottom of the bag?

6 A. Yeah, but it was all connected. You
7 couldn't take them off.

8 Q. Okay. So they were permanently
9 connected?

10 A. They were permanently connected.

11 Q. Do you remember where the bottom
12 connections were? Well, let me start with were the
13 bottom connections on the back of the bag?

14 A. Yes.

15 Q. And were they somewhere along the bottom
16 of the bag?

17 A. Yes.

18 Q. Do you remember if they were along the
19 very bottom or if they were along the side on the
20 bottom?

21 A. I don't recall.

22 Q. Okay. Do you still have that bag?

23 A. I do still have that bag.

24 Q. Do you use it?

25 A. No.

1 Q. You use your own bags?

2 A. Exactly.

3 Q. There you go. Okay. It continues. "In
4 2019, while on a trip, Kimberly became increasingly
5 frustrated with the need to have multiple bags, and
6 with the size of her Fawn Design bag." Do you see
7 that?

8 A. I do.

9 Q. Is that accurate?

10 A. It is.

11 Q. What was it about the size of the Fawn
12 Design bag that frustrated you?

13 A. It was just big. It was bulky. I wasn't
14 a mom yet. I didn't need a big bag.

15 Q. It continues, "She remembered she" --
16 referring to Kimberly, correct?

17 A. Correct.

18 Q. "Remembered seeing a crossbody bag at the
19 Coca-Cola store in Las Vegas and thought that it
20 would be a great type of bag to have." Do you see
21 that?

22 A. I do.

23 Q. Is that accurate?

24 A. That is.

25 Q. Do you remember what that crossbody bag

1 looked like?

2 A. A little bit.

3 Q. What do you remember?

4 A. I remember it having -- I remember it
5 being clear. I remember it having the Coca-Cola
6 sign on it. I remember it being rectangle. I
7 remember it having straps on both sides to wear it
8 across your shoulder.

9 Q. Do you remember if the straps were
10 removable?

11 A. I don't recall.

12 Q. Do you remember what the attachment
13 points looked like for the straps?

14 A. I don't.

15 Q. Going down a couple of sentences, there
16 is a sentence that starts "Kimberly discussed this
17 type of bag." Do you see that?

18 A. I do.

19 Q. It says "Kimberly discussed this type of
20 bag on videoconferences with her packing cube
21 manufacturer." Do you see that?

22 A. I do.

23 Q. Tell me about that.

24 A. What do you mean?

25 Q. Well, let me start, is that sentence

1 accurate?

2 A. It is.

3 Q. What did you discuss on videoconferences
4 with your packing cube manufacturer?

5 A. That I wanted to create a bag that could
6 be worn a bunch of different ways with credit card
7 holders and key clasps inside.

8 Q. And you discussed it on videoconferences?

9 A. I did.

10 Q. The next sentence says "Upon further
11 investigation, she found square and rectangular
12 bags available on Alibaba.com." Do you see that?

13 A. I do.

14 Q. Do you remember what you saw on Alibaba?

15 A. I don't.

16 Q. Did you see anything that looked like the
17 design of your crossbody bag on Alibaba?

18 A. Not completely like my design, no.

19 Q. Did you see something similar?

20 A. I can't recall.

21 Q. Okay. So Kimberly, sometimes, especially
22 with smaller e-commerce businesses, what people
23 will do is they'll look on Alibaba or AliExpress,
24 they'll find a product that they like, and they'll
25 go to their manufacturer and they'll say, "Can you

1 make me this bag?" Do you ever do that?

2 A. My beanies.

3 Q. Your beanies, you did that?

4 A. Mm-hmm. Yeah.

5 Q. Have you done that with any other bags?

6 A. I have not.

7 Q. Any other products?

8 A. No.

9 Q. Okay. Have you ever gone to your
10 manufacturer and asked them if they have a product
11 that fits what you're looking for?

12 A. No.

13 Q. You've never done that?

14 A. No.

15 Q. Okay. Did you ever send e-mails to your
16 manufacturer about this crossbody bag?

17 A. No.

18 Q. Do you ever e-mail your manufacturer at
19 all?

20 A. She'll send me invoices, but that's it.

21 Q. How did you schedule video calls with
22 your manufacturer?

23 A. Just through WhatsApp.

24 Q. Did you send her a message saying, "Hey,
25 can we talk?"

1 A. No. I just -- I just called her and she
2 would call me.

3 Q. Okay. So you would just call her?

4 A. Mm-hmm.

5 Q. When you needed to call her?

6 A. Mm-hmm.

7 Q. That's a "yes"?

8 A. Yes. Sorry. I'm sorry. I'm so used to
9 saying "mm-hmm."

10 Q. It happens a lot.

11 Okay. We're going to go back to
12 Exhibit-5. We're going to look at Interrogatory
13 No. 3. This says "Identify, by brand name, model
14 name or number, et cetera, each accused product,
15 developed, manufactured, made, purchased, sold, et
16 cetera, by Brixley."

17 We just talked about what accused product
18 means. Do you understand that accused product is
19 referring to Brixley's crossbody bag?

20 A. I do.

21 Q. Okay. The response says "Brixley
22 identifies the original crossbody sling, which was
23 the subject of Mr. McConkie's demand letter" --

24 I'll pause there. Do you understand that
25 to mean the original version of the crossbody bag?

1 A. Is that -- wait, say that one more time.

2 Q. So looking at this, it says "Brixley
3 identifies the original crossbody sling, which was
4 the subject of Mr. McConkie's demand letter." Do
5 you know what that is?

6 A. Yes. The first letter they sent me.

7 Q. Okay. So that's the original crossbody
8 bag it's talking about?

9 A. Yes. It says "original crossbody sling."

10 Q. Okay. And then it says "and the current
11 iteration of the crossbody sling." Do you see
12 that?

13 A. I do.

14 Q. And that's the current version that you
15 sell?

16 A. Yes.

17 Q. And I understand that you sell this bag
18 in a variety of patterns and materials and colors;
19 is that correct?

20 A. And sizes.

21 Q. And sizes?

22 A. And size. I have one larger size.

23 Q. Okay. How did you decide to do a larger
24 size?

25 A. There was people who wanted a bigger bag.

1 Q. How did you choose the dimensions for
2 that bag?

3 A. I got out a tape measure and
4 tape-measured what would be the best size for the
5 bigger bag.

6 Q. So other than what we've just talked
7 about, does Brixley sell any other variations of
8 its crossbody bag?

9 A. No.

10 Q. Does Brixley sell any other crossbody
11 bags?

12 A. No. Actually, yes, mini. A mini one.
13 I'm coming out with a mini one. It will be
14 launched here soon.

15 Q. You're coming out with a mini?

16 A. Mm-hmm.

17 Q. And what does that look like?

18 A. It looks identical, but it's miniature.

19 Q. When you say it looks identical, it looks
20 identical to what?

21 A. Our crossbody sling.

22 Q. So it looks identical to your current
23 crossbody sling?

24 A. Correct.

25 Q. It's just smaller?

1 A. Mm-hmm. Yes.

2 Q. Other than that, does Brixley sell any
3 other variations of its crossbody bag?

4 A. No.

5 Q. I'm going to go down to this paragraph
6 down here where it says "The original Brixley bag
7 was available for preorder in late 2020 and
8 available for purchase until Brixley sold its
9 existing inventory on September 25, 2021." Is that
10 accurate?

11 A. That is accurate.

12 Q. The next sentence says "Brixley began
13 taking preorders on their new crossbody bag in
14 September and continues to sell that product." Do
15 you see that?

16 A. I do.

17 Q. Do you know if that's supposed to say
18 September 2021?

19 A. I don't, no. I don't recall.

20 Q. Do you remember when you started selling
21 your new crossbody bag?

22 A. I don't remember.

23 Q. Okay. Was it last year?

24 A. No.

25 Q. Was it the year before?

1 A. I can't recall.

2 Q. Okay. Interrogatory No. 4 says "identify
3 and describe the date and circumstances upon which
4 anyone at Brixley first became aware of the Thread
5 crossbody bag." Do you see that?

6 A. I do.

7 Q. We're going to skip down to the last
8 sentence of this response where it says "Brixley
9 further states that an officer at Brixley, Kimberly
10 O'Connell, viewed an add on Facebook promoting the
11 Thread product in late 2020." Do you see that?

12 A. I do.

13 Q. What does "the Thread product" mean?

14 A. I'm not sure. It must be the crossbody
15 sling.

16 Q. Is that referring to the Thread crossbody
17 bag?

18 A. Yes.

19 Q. Yes?

20 A. Yes.

21 Q. Okay. And "Kimberly O'Connell" refers to
22 you?

23 A. Yes.

24 Q. When in 2020 did you see that ad?

25 A. It must have been late 2020.

1 Q. Do you remember if it was before or after
2 you started designing your crossbody bag?

3 A. I did not see it before I started
4 designing my own crossbody bag.

5 Q. But you remember seeing the ad?

6 A. After I had designed my product, but yes.

7 Q. Where did you see that ad?

8 A. Facebook.

9 Q. Were you on your phone?

10 A. I can't recall.

11 Q. You don't recall where you saw it?

12 A. I don't.

13 Q. Okay. Do you remember where you were at
14 in the process of selling your crossbody bag?

15 A. I don't.

16 Q. Do you remember if you had started
17 offering it for sale yet?

18 A. I don't.

19 Q. But you remember seeing it?

20 A. Yes, I do remember seeing it.

21 Q. Do you remember what it looked like?

22 A. I do not.

23 Q. What did you think when you saw it?

24 A. I didn't have any thoughts.

25 Q. Did you think that their bag looked like

1 your bag?

2 A. No, because it doesn't look the same.

3 Q. But you remember seeing it?

4 A. I do remember seeing it.

5 Q. Had you seen other Thread advertisements?

6 A. Yeah, they pop up.

7 Q. But you specifically remember this one?

8 A. I don't specifically remember this one,

9 but I remember seeing an ad pop up in late 2020.

10 But it's not like I specifically remember the time

11 and date that I was where I saw it.

12 Q. So you didn't think much of it?

13 A. No.

14 Q. What did you do when you saw the ad?

15 A. Nothing.

16 Q. Did you click on it?

17 A. No.

18 Q. All right. We're going to go down to

19 Interrogatory No. 5. And it says "Identify all

20 actions Brixley took in response to the 2021

21 letter." Do you see that?

22 A. I do.

23 Q. Do you know what the "2021 letter" refers

24 to?

25 A. I do.

1 Q. What is that?

2 A. The cease and desist.

3 Q. From Thread?

4 A. Yes.

5 Q. Okay. Looking at the second paragraph in
6 the response, it starts "Brixley further states
7 that it implemented proposed changes detailed in
8 correspondence between Scott Hilton and James
9 McConkie dated June 15, 2021." Do you see that?

10 A. I do.

11 Q. Is that accurate?

12 A. Yes.

13 Q. Do you remember when you started
14 implementing those changes?

15 A. I do not.

16 Q. We talked earlier about how you changed
17 your bag once you got the letter. Do you remember
18 if you started making those changes before you got
19 suggestions from James McConkie or after?

20 A. After.

21 Q. It was after?

22 A. It was.

23 Q. Okay. Now the next sentence -- I'm going
24 to walk you through these. Well, this is what
25 we're going to do. So the next sentence starts

1 talking about some changes that you say you made.

2 Do you see that?

3 A. I do.

4 Q. We're going to go through each of these.

5 Okay? Because, again, this sentence says "Brixley

6 implemented proposed changes," so these changes

7 included moving the Brixley logo from the bottom

8 right corner of the bag. Did you move the Brixley

9 logo from the bottom right corner of the bag?

10 A. Yes.

11 Q. Next sentence, "Removing patches with the

12 Brixley logo." Do you see that?

13 A. Yes.

14 Q. What does that mean?

15 A. The patch in the right corner was moved.

16 Q. This says removing, not moving. So did
17 you actually remove patches?

18 A. Yes, because it's embroidery now.

19 Q. Okay. So this is talking about switching
20 out the patches for embroidery?

21 A. Correct.

22 Q. Okay. Next sentence says "Moving the
23 Brixley branding on the front of the bag from the
24 bottom right corner." Do you see that?

25 A. Yes.

1 Q. What does that refer to?

2 A. Moving the branding from the bottom right
3 corner to the left bottom.

4 Q. Okay. So is this talking about the same
5 thing that this first change says, which is moving
6 the Brixley logo from the bottom right corner?

7 A. It does.

8 Q. Okay. So those are the same thing?

9 A. Yes.

10 Q. And the last thing says "Changes to the
11 zipper." What zipper is it talking about?

12 A. I'm not sure what zipper it's talking
13 about.

14 Q. Did you change any of the zippers on the
15 second version of the bag?

16 A. I can't recall.

17 Q. Okay. Would it help if I pulled up the
18 two versions of the bag and let you look at them?

19 A. No, because it would have to be in person
20 for me to be able to feel the zippers.

21 Q. Okay. So you wouldn't be able to tell
22 unless you saw it in person?

23 A. Correct.

24 Q. Do you think that an ordinary consumer
25 could tell the changes if they didn't see them in

1 person?

2 A. I'm not sure.

3 Q. But you couldn't?

4 A. No, I couldn't -- I couldn't tell the
5 changes between the two unless -- actually, do you
6 mind pulling it up?

7 Q. Yeah. I still have it open in case you
8 wanted to look at it. So I have -- this is what
9 I'm going to do. I'm going to pull this out -- oh,
10 I've got to minimize it first. Sorry. I'm trying
11 to make it smaller again. There we go.

12 MR. TODD: If you press and hold in the
13 green corner, it will let you tile them side by
14 side.

15 MS. FRANSEN: Oh, that's cool.

16 MR. TODD: So, yeah. Sorry.

17 MS. FRANSEN: My Mac is honestly also a
18 little finicky.

19 MR. TODD: If you go -- press and hold it
20 and it will let you -- go down and you can select
21 which one you want on the other side.

22 MS. FRANSEN: Perfect. Thank you.

23 Q. (BY MS. FRANSEN) Okay, Kimberly. So
24 we've got Exhibit-2 and Exhibit-3 up in front of
25 you. Do you see that?

1 A. I do.

2 Q. We've got Exhibit-2 on the left. That's
3 the original crossbody and then Exhibit-3 on the
4 right. And that's the new crossbody. Is that
5 right?

6 A. Yes.

7 Q. Looking at these side by side, can you
8 tell me what changes were made to a zipper?

9 A. The photo is not big enough.

10 Q. Which one do you want me to make bigger?
11 Both of them?

12 A. The left one.

13 Q. Do you want this top photo? Or do you
14 want one of the smaller ones?

15 A. That one works. I believe they're the
16 same zipper.

17 Q. Okay. So this top paragraph that's on
18 the screen, it says "Brixley further states that it
19 implemented proposed changes detailed in
20 correspondence between Scott Hilton and James
21 McConkie dated June 15th, 2021."

22 We just talked about that sentence. But
23 do you remember if you implemented all of the
24 changes proposed in that correspondence? Or did
25 you only do some of them?

1 A. All of them except the zipper.

2 Q. Okay. And when you say "all of them,"
3 you're talking about all the changes -- and this is
4 kind of unfair because I'm actually going to show
5 you the correspondence and we'll go over it later.
6 I just want to know if you remember, off the top of
7 your head. Do you remember if you made all the
8 changes that Thread suggested?

9 A. I did. Yes.

10 Q. Okay.

11 A. Oh, that Thread suggested?

12 Q. Yes.

13 A. I know I did all of them except the D
14 ring because it's universal. Everyone uses it.

15 Q. Tell me about that. So did Thread
16 suggest that you change the D ring?

17 A. That I should not use a D ring.

18 Q. Did they suggest you use a different
19 shape of ring?

20 A. They didn't tell me what shape, but they
21 said don't use a D ring.

22 Q. You didn't do that?

23 A. No, because it's universal, and any other
24 shape I would have done it would have slid off and
25 it wouldn't have made sense.

1 Q. Tell me about that. So -- and remember
2 that on the record, we're only going to have your
3 words. We won't have your hands. So if you can,
4 tell me what --

5 A. Oh, sorry.

6 Q. It's okay. Tell me what it means when
7 you say it would slide off if you use a different
8 kind of ring.

9 A. No other ring -- sorry. There's --

10 Q. You can use your hands. It's just not
11 going to show up.

12 A. Yes. Yes. There's no other ring that
13 would make sense for a crossbody to sit the way it
14 sits on your body with any other ring. Does that
15 make sense?

16 Q. Would it change the orientation if you
17 used a different kind of ring?

18 A. What's orientation?

19 Q. So the way the bag is angled.

20 A. Correct. I believe it would.

21 Q. Have you ever tried it?

22 A. I have not.

23 Q. Okay. We are going to go down to
24 Interrogatory No. 7. Interrogatory 7 says
25 "Identify with particularity the factual and legal

1 basis for Brixley's allegations, including the
2 defenses, et cetera, that the 105 patent is
3 invalid." Do you see that?

4 A. I do.

5 Q. Do you know what the 105 patent is?

6 A. No.

7 Q. Do you understand that that's Thread's
8 patent?

9 A. Now I do.

10 Q. Okay. It's been asserted in this action.

11 A. Okay.

12 Q. Did you help draft this response?

13 A. I don't know about this response.

14 Q. Okay. There's really only one sentence
15 that I want to know about.

16 A. Okay.

17 Q. It's in the middle of the second
18 paragraph. It says "Brixley is aware of several
19 bags in existence that would anticipate the 105
20 patent or at the very least could be combined to
21 render the design claimed in the 105 patent
22 obvious." Do you understand what that sentence is
23 saying?

24 A. Not fully.

25 Q. Okay. So the part that I really want to

1 know about is where it says "Brixley is aware of
2 several bags." Are you aware of several bags in
3 existence that look like Thread's crossbody bag and
4 came out before Thread's crossbody bag?

5 A. I know crossbodies that look similar to
6 Thread's crossbody bag.

7 Q. Do you know what those bags are?

8 A. Not off the top of my head, no.

9 Q. Do you know what they look like?

10 A. I just know what they look like in my
11 head.

12 Q. Can you describe them for me?

13 A. I don't know how to describe them.

14 Q. What shape are the bags that you're aware
15 of?

16 A. Rectangle.

17 Q. Do they have a flat front pocket?

18 A. Yes.

19 Q. Are you aware of bags that have D rings
20 along -- attached to the back of the bag?

21 A. Yes.

22 Q. Are you aware of any bags that have D
23 rings -- two D rings on the top of the bag and one
24 D ring along the bottom of the bag?

25 A. I'm not sure specifically.

1 Q. Are you aware of any bags that have two D
2 rings along the top of the back of the bag and two
3 D rings along the bottom of the back of the bag?

4 A. Yes.

5 Q. What bags were you aware of?

6 A. I don't remember the names.

7 Q. Do you know if they came out before
8 Thread's bag did?

9 A. I'm not sure.

10 Q. So you don't know if there are any bags
11 that came out before Thread's bag that looked
12 similar?

13 A. Correct. I'm not sure.

14 Q. Okay. Do you know why this response then
15 says that "Brixley is aware of several bags in its
16 existence"?

17 A. Because there is several bags of
18 existence that look similar to Thread's.

19 Q. But you don't know off the top of your
20 head if they came out before Thread's bag or after?

21 A. I don't know if they came out before or
22 after.

23 Q. Okay. I actually did have one more set
24 of questions on this response. So the third
25 paragraph down says "Additionally, Brixley states

1 that the 105 patent is invalid on the grounds that
2 the design is functional." Do you know what that
3 means?

4 A. I don't.

5 Q. Okay. That's all right.

6 Moving on to response to Interrogatory
7 No. 11, this says "Identify all entities who are or
8 have been involved in manufacturing, supplying,
9 importing, and/or sourcing the Brixley crossbody
10 bag to Brixley or third parties." Do you see that?

11 A. I do.

12 Q. The response in the second paragraph says
13 "Brixley supplements this response by stating the
14 manufacturer is Quanzhou Redheart Bags Co. LTD."
15 Do you see that?

16 A. I do.

17 Q. I don't know if I said that right. You
18 might know better than me. Is that accurate?

19 A. That is.

20 Q. Has there ever been anyone else who's
21 ever manufactured your crossbody bags?

22 A. No.

23 Q. Interrogatory No. 12, it states
24 "Individually for each of the accused products
25 identified in response to Interrogatory No. 1,

1 state the monthly U.S. sales, and gross and net
2 profit associated with the sales, from August 15th,
3 2023, to the present." Do you see that?

4 A. I do.

5 Q. Do you know what Brixley's total profits
6 are from the crossbody bag since August 15th, 2023?

7 A. I do not.

8 Q. Do you have a ballpark figure?

9 A. I do not.

10 Q. Is there someone else who would know that
11 better?

12 A. I would be the one.

13 Q. Okay. Do you have records that show what
14 the profits are?

15 A. I do.

16 Q. Do you understand that those profits are
17 potential damages in this action?

18 A. What do you mean by that?

19 Q. I mean, if we go all the way and Thread
20 wins this lawsuit, there's a statute that says that
21 Thread can recover all the profits from your bag
22 starting from when the patent issued. Were you
23 aware of that?

24 A. No.

25 Q. Okay. I have one more set of questions

1 on this exhibit. This is Interrogatory No. 15. It
2 says "Explain Brixley's awareness of, interactions
3 with, and relationship with entities and/or
4 individuals who have tagged or referenced Brixley
5 in comments made on Thread's social media posts."
6 Do you see that?

7 A. I do.

8 Q. We've talked a little bit about this. So
9 you are aware that individuals have tagged or
10 referenced Brixley in comments made on Thread's
11 social media posts and ads, correct?

12 A. Correct.

13 Q. Do you have any -- that you know of, do
14 you have any relationship with any of these
15 individuals?

16 A. No.

17 Q. Have you ever told anyone to comment on
18 Thread's social media posts or ads?

19 A. No. I'm not that kind of person.

20 Q. You don't seem like that kind of person.

21 A. Thank you.

22 Q. Have you ever encouraged anyone to
23 comment on Thread's social media posts or ads?

24 A. Absolutely not.

25 Q. Have you ever told anyone that Thread

1 copied your bag?

2 A. No.

3 Q. Are you aware of any groups of
4 individuals who have deliberately commented on
5 Thread's crossbody bag posts?

6 A. No.

7 Q. Are you aware of any groups of
8 individuals who have formed groups on the internet
9 regarding the Brixley Bags or Brixley in general?

10 A. Yes. I have a Brixley Girlies Facebook
11 group.

12 Q. Are you aware of anything else?

13 A. No.

14 Q. So as far as you're aware the comments
15 that have been made on Thread's social media came
16 from consumers who are unaffiliated with you or
17 Brixley in any way?

18 A. Correct.

19 Q. Okay. I'm about to get into a big
20 exhibit. We haven't been going for quite an hour.
21 I would like to keep going unless you guys are --
22 need a break.

23 MR. TODD: Are you good?

24 THE WITNESS: How long? Can I ask how
25 long this exhibit is?

1 MS. FRANDSEN: Well, we don't have --
2 here's the thing. I don't think we're going to
3 finish this exhibit before we need another break.
4 I'd like to at least start it. Because the more
5 breaks we take, the longer the day is. And I don't
6 think anyone wants that.

7 MR. TODD: It's whatever -- whatever you
8 feel good with.

9 THE WITNESS: I'll take -- I'll take a
10 break.

11 MS. FRANDSEN: Let's go off the record.

12 (Off the record from 11:02 a.m. to
13 11:08 a.m.)

14 Q. (BY MS. FRANDSEN) There we go. I'm
15 going to introduce Exhibit-7. On the record.

16 (Exhibit-7 marked.)

17 Q. (BY MS. FRANDSEN) Kimberly, do you
18 recognize this?

19 A. I do.

20 Q. And that's about as big as I can make it.
21 Does that work?

22 A. That's fine.

23 Q. What is this document?

24 A. These are text messages between my
25 manufacturer and me.

1 Q. And I can scroll through this if you
2 want, but as far as you're aware, is this a true
3 and accurate copy of the records with your
4 manufacturer?

5 A. This is.

6 (Off the record from 11:09 a.m. to
7 11:10 a.m.)

8 MR. TODD: And we'll designate this
9 portion of the deposition attorneys' eyes only.

10 (AEO begins.)
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(AEO ends.)

Q. (BY MS. FRANDSEN) Kimberly, do you
recognize this?

A. I do.

Q. What is this?

A. This is a picture on Instagram.

Q. And is this on the Brixley Bags Instagram
account?

A. This is.

Q. Who created this post?

A. I created this post.

Q. Did you post it?

A. I did post it.

Q. What's the date on this post?

1 A. November 5th, 2020.

2 Q. The caption on here says "Preorders are
3 now available. Officially introducing our
4 crossbody sling in desert and slate. Click the
5 link in our bio to preorder. They will be shipped
6 out after Thanksgiving." Do you see that?

7 A. I do see that.

8 Q. Does this jog your memory of when you
9 started offering the crossbody bag?

10 A. Yes, it does. Thank you.

11 Q. Is the crossbody bag in that picture a
12 sample? Or is it something from a mass production?

13 A. I can't recall on that photo.

14 Q. Do you remember if you had placed an
15 order for bags as of November 5th, 2020, for I
16 guess a mass production of bags versus samples?

17 A. I believe these were in production
18 because -- I believe these were in production.

19 Q. Okay. Because if you had bags to sell,
20 it wouldn't be a preorder, right?

21 A. Correct.

22 Q. If you had bags to sell, you would have
23 just offered them for sale?

24 A. Correct.

25 Q. Okay. So we think that you didn't have a

1 mass production of bags in hand as of November 5th,
2 2020?

3 A. Not in hand, but I believe to my door.
4 They were being shipped to my door.

5 Q. They were being shipped?

6 A. Correct.

7 Q. But you didn't have them yet?

8 A. Correct.

9 Q. Okay. Does that jog your memory about
10 when you ordered them to be manufactured?

11 A. I don't know the exact date on that
12 still.

13 Q. Okay. Why did you start advertising
14 so -- before you had a mass production? Were you
15 excited to start offering the bag?

16 A. I was excited to start offering the bag.
17 I love the bag. I wore the bag. And preorders
18 helped have money for -- for the capital for the
19 business.

20 Q. Okay. So it's 2:00. Do we want to take
21 a break? Or do you want to keep going for a little
22 longer?

23 A. Is it okay if we take a break?

24 Q. Yes. Off the record.

25 (Off the record from 2:00 p.m. to

1 2:08 p.m.)

2 Q. (BY MS. FRANSEN) I'm going to introduce
3 another exhibit.

4 MR. TODD: Did you have -- oh,
5 Exhibit-10. There it is. Sorry.

6 Q. (BY MS. FRANSEN) This has been marked
7 as Exhibit-11. Hang on. I got to reshare.

8 (Exhibit-11 marked.)

9 Q. (BY MS. FRANSEN) Kimberly, have you
10 seen this before?

11 A. I have.

12 Q. What is this?

13 A. This is the cease and desist in 2021.

14 Q. That you got from Thread Wallets?

15 A. Correct.

16 Q. Did you receive this personally?

17 A. I received it in the mail.

18 Q. What did you do when you got it?

19 A. I told Ethan and we called a lawyer.

20 Q. Were you surprised when you got this
21 letter?

22 A. Very.

23 Q. Why were you surprised?

24 A. Because I hadn't done anything wrong.

25 Q. You were aware of Thread at this point,

1 right?

2 A. I was aware of Thread at this point.

3 Q. You were aware of their crossbody bag?

4 A. Correct.

5 Q. And you had gotten at least one message
6 telling you that -- that someone thought that your
7 bag was similar to Thread's?

8 A. Correct.

9 Q. And you were still surprised?

10 A. I was.

11 Q. We're going to scroll down and look at
12 this second page of the letter. Can you tell me
13 what this image is on the left?

14 A. This is the Brixley crossbody sling.

15 Q. And what's the image on the right?

16 A. Thread crossbody sling.

17 Q. So do you think these bags look different
18 in their design?

19 A. I do.

20 Q. What are the differences that you see on
21 these images?

22 A. I see a different zipper. I see a
23 different logo. I see different coloring. I
24 see -- yeah.

25 Q. Anything else?

1 A. No.

2 Q. You mentioned the zipper is a difference.
3 Which zipper are we talking about?

4 A. The two zippers compared to each other.

5 Q. So looking at the bag, are you talking
6 about the zipper that goes across the front?

7 A. I'm sorry. Yes, I am.

8 Q. Okay. What is different about the
9 zippers?

10 A. The zipper, the coloring is different, as
11 well as Thread's has a little string and Thread's
12 is circle. And kind of ovalish. And mine is
13 rectangle and square.

14 Q. When you talk about the circle and the
15 oval, are you talking about the zipper pulls?

16 A. Yes.

17 Q. Okay. Let's go down to the next page.
18 Well, actually, we'll save that. I'm going to
19 introduce Exhibit-12.

20 (Exhibit-12 marked.)

21 Q. (BY MS. FRANSEN) So I'm going to
22 actually save Exhibit-12 and then we're going to
23 move on to Exhibit-13.

24 (Exhibit-13 marked.)

25 THE WITNESS: Okay.

1 Q. (BY MS. FRANDSEN) Because I have another
2 question for you in this vein. Do you -- this is
3 Exhibit-13. Do you recognize this?

4 A. Yes. I believe I do.

5 Q. Have you seen this before?

6 A. I don't recall. I just have seen so many
7 documents.

8 Q. Okay. So it looks like if you look up at
9 the top, there's a Workman Nydegger logo with James
10 McConkie III. Do you see that?

11 A. I do.

12 Q. Do you know who that is?

13 A. I think your business partner or
14 something. Your partner or something.

15 Q. So he was a lawyer for Thread back in
16 2021.

17 A. Oh. Okay.

18 Q. And then the address line says Scott
19 Hilton at Kunzler Bean & Adamson. Do you see that?

20 A. Yes, I do.

21 Q. Was that your lawyer?

22 A. Yes.

23 Q. Okay. So this is a lawyer from
24 Thread's -- a letter from Thread's lawyer to your
25 lawyer?

1 A. Yes.

2 Q. All right. That's a lot of background
3 for what I really wanted to get at, which is page
4 2. Do you recognize the image on the top left?

5 A. I do.

6 Q. What is that?

7 A. That is the Brixley crossbody sling.

8 Q. And do you know what the image in the top
9 right is?

10 A. A Thread crossbody sling.

11 Q. So you talked to me about the differences
12 you see on the front of the bag. Do you see any
13 differences on the back of the bag?

14 A. Looks like their, like, pocket is higher.
15 And it looks like they didn't stamp their logo like
16 I stamped mine. I could be wrong. I don't know.
17 And I know mine has Velcro and theirs does not.

18 Q. Where did your bag have Velcro?

19 A. At the back pocket.

20 Q. Was it inside the back pocket?

21 A. Yes.

22 Q. You mentioned stamping the logo. What
23 did you mean by that?

24 A. It's like stamped. It's embossed.

25 Q. So your logo is embossed in the --

1 A. In the PU leather.

2 Q. Okay. Do you see any other differences
3 between your original bag and Thread's bag?

4 A. It looks like their D rings are plastic
5 and mine are metal. And their strap has like a
6 little, like, clicky thingy. Like, they're
7 strapped to click on the D ring and mine to, like,
8 push.

9 Q. Okay. So the straps are different?

10 A. Correct.

11 Q. Okay. Any other differences?

12 A. No.

13 Q. Let's go back to Exhibit-11. This is the
14 April 22nd, '21, letter. You said you called a
15 lawyer. Did you talk with this letter about -- did
16 you talk about this letter with anyone else?

17 A. Ethan's father.

18 Q. What did you talk to him about?

19 A. Ethan had talked to his dad about the
20 letter.

21 Q. Okay. So you weren't in on that
22 conversation?

23 A. I was not in on that conversation, no.

24 Q. Okay. Did you personally talk to anyone
25 else?

1 A. I did not.

2 Q. Okay. There's one conversation that I've
3 already introduced this, and I didn't want to
4 change my exhibit numbers so I'll go back to it.
5 This is Exhibit-12.

6 A. Oh, yes.

7 Q. So let's talk about this.

8 A. Okay. Yes.

9 Q. Do you recognize this?

10 A. Yes, I do. If you don't pull this stuff
11 up, I can't remember this stuff.

12 (Reporter request for clarification.)

13 Q. (BY MS. FRANDSEN) So if you look at the
14 top, there's a little bubble, and then it says
15 "Lindsay."

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. Who is Lindsay?

20 A. Lindsay's my friend.

21 Q. How do you know her?

22 A. Lindsay and I used to work together.

23 Q. Are these screenshots from your phone?

24 A. These are screenshots from my phone, yes.

25 Q. Okay. So did you send the texts in the

1 blue bubbles?

2 A. I did.

3 Q. And did she send the ones in the gray
4 bubbles?

5 A. Yes.

6 Q. Okay. On this first page, there's a date
7 that says April 28th at 9:10 p.m. Do you see that?

8 A. I do.

9 Q. It says "Thread Wallets came after me."
10 Do you see that?

11 A. I do.

12 Q. "For my crossbody bag."

13 She says "Serious?"

14 You said "Yep. Got a letter in the mail.
15 Calling a lawyer tomorrow."

16 Did you have any conversations with
17 Lindsay outside of this text string? And I can
18 scroll down if you want to see the whole thing.

19 A. Not about this, no. We -- we text all
20 the time. We're friends. And we text, but not
21 about this, no.

22 Q. Okay. If you go down to the last page of
23 this exhibit, which is Brixley 2117, she says
24 "Haha. Just a threat."

25 You say "What are your thoughts? Haha.

1 Don't tell anyone." Do you see that?

2 A. I do.

3 Q. Did she ever tell you her thoughts?

4 A. She never did. No. She never told me.

5 Q. Okay. She just never responded?

6 A. No, she didn't.

7 Q. Did you guys talk about it again at lunch
8 or anything like that?

9 A. No. We weren't -- at this time, we
10 weren't working together anymore.

11 Q. You say "Haha. Don't tell anyone." Why
12 didn't you want her to tell anyone?

13 A. My family doesn't even know about this
14 lawsuit. I don't want anyone to know about this
15 lawsuit. It's -- I think it's dumb. I don't like
16 it. It's -- it doesn't need to be told about
17 because I have a really loyal fan base, and if they
18 were to find out about it, I think it would make it
19 a lot worse because I think they'd go after Thread
20 Wallets and say stuff to them. Not on mine, but
21 on -- because they are loyal and loyal to me
22 because I've created a community.

23 Q. Well, and we'll talk about this later,
24 but don't some of them already know about the
25 lawsuit?

1 A. Some of them do, yes.

2 Q. Did anything happen once they found out?

3 A. No.

4 Q. And you mentioned --

5 A. Not that I know of.

6 Q. So you mentioned earlier today -- I
7 believe you testified that you've mentioned the
8 lawsuit to your family. You just said you haven't
9 mentioned it to your family?

10 A. I'm sorry. I meant Ethan's family. Not
11 my family.

12 Q. Okay. So you have not talked about it
13 with your family?

14 A. I have not.

15 Q. Okay. And it's because you don't want
16 your fans to do anything?

17 A. I don't want to tell my family because I
18 don't think I need to. I don't want to talk about
19 it more than I have to. It's already hard enough
20 for me to have to do this. So having to talk about
21 it more is even worse. So I don't want to bring it
22 up to my family because I don't want to deal with
23 it again.

24 Q. Okay.

25 A. Sorry.

1 Q. I'm going to go back to Exhibit-13.
2 Again, this is that response, that letter that was
3 sent from James McConkie to Scott Hilton. And --

4 A. Thank you.

5 Q. Looking again at these bags, so you
6 pointed out some of the differences that you see
7 between these bags?

8 A. Correct.

9 Q. Do you also see that the bags are the
10 same general shape?

11 A. I do.

12 Q. And do you see that they both have the
13 three D rings?

14 A. I do see that.

15 Q. And that they're all in the same spot?

16 A. I do see that.

17 Q. And there's a logo that's in the same
18 spot?

19 A. I do see that.

20 Q. And you say the pocket is a little bit
21 lower, but wouldn't you say generally it's in about
22 the same spot?

23 A. I could see what you're saying.

24 Q. So how do you explain how you came out
25 with a bag with all of these similarities to

1 Thread's bag just a few months after Thread came
2 out with their bag?

3 A. I'm not sure what you want me to say or
4 what you're trying to get at it, but I never copied
5 anyone's bag or stole anyone's design.

6 Q. And I get that's been your testimony.

7 A. Yeah.

8 Q. But what I don't understand is how the
9 bags ended up with all of these same elements.
10 Were all of these elements present in another bag
11 before you guys came out with yours?

12 A. No. I'm not sure.

13 Q. So was it just a coincidence that they
14 both turned out like this?

15 A. It must have been.

16 Q. Okay. I'm going to introduce another
17 exhibit. This is Exhibit-14.

18 (Exhibit-14 marked.)

19 Q. (BY MS. FRANDSEN) So first, Kimberly, I
20 want to point out to you that it has -- this
21 document has this Bates stamp at the bottom that
22 says Brixley 231.

23 A. Okay.

24 Q. This means that you -- that Brixley
25 produced this document. But I don't know if you've

1 actually seen it or not or if your lawyers just
2 pulled it out for you. And, again, I don't need to
3 know the conversations you've had with your lawyers
4 unless you're going to rely on them at trial. If
5 you're going to stand up in front of the jury and
6 say, "Well, my lawyer told me this, so I did X," I
7 need to know that here today. And you and your
8 lawyer can kind of work that out between
9 yourselves. If you -- if your lawyer objects on
10 privilege today and you don't answer, and then you
11 try to rely on that information at trial, we're
12 going to object to it at that point. Okay?

13 So --

14 A. That doesn't really make sense to me.

15 Q. It should make more sense to Bud. So
16 basically what I'm trying to say is, next year, at
17 some point, we're going go to trial, right? So the
18 reason we're here today is I'm trying to figure out
19 everything you might say at trial because the law
20 says I don't have to be surprised at trial. I can
21 ask you right now. Right?

22 A. Okay.

23 Q. So if I ask you something right now, it
24 may get to conversations you've had with your
25 lawyer. And your lawyer, your now-lawyer who's not

1 the same one, may object based on privilege. And
2 he may say, "That's privileged. You don't have to
3 answer that question."

4 A. Okay.

5 Q. If we need to take a break at any point
6 so you guys can figure this out, we can. I'm just
7 giving you both a heads up that if Bud objects
8 based on privilege and you say, "I had a
9 conversation with my lawyer. I'm not going to tell
10 you what we said," that's fine. You're allowed to
11 do that. But then next year at trial, you can't
12 rely on that conversation you had with your lawyer
13 because we're going to object. Okay?

14 A. Okay.

15 Q. And if we need to dismiss so you guys can
16 talk about it, we can. I don't think we're going
17 to get to that right here. I just wanted to put
18 that out right here. Okay?

19 THE WITNESS: What do you think?

20 MR. TODD: Well, we need to proceed. And
21 then we'll face it as it comes.

22 Q. (BY MS. FRANSEN) Okay.

23 A. Okay.

24 Q. Okay. So looking at this document right
25 here, like I said, this has a Brixley Bates stamp

1 on it, which means you guys produced it. But I
2 don't know if that's because your lawyers pulled it
3 out or if you did. So have you ever seen this
4 document before?

5 A. I can't recall.

6 Q. Okay. So do you see the "from" line at
7 the top?

8 A. Yes.

9 Q. This is from James McConkie?

10 A. Yes.

11 Q. We just talked about him. Do you
12 remember who he is?

13 A. Yes. He's part of the firm. Oh, no. He
14 was the old one. He was the old lawyer.

15 Q. Okay. He represented Thread?

16 A. Yeah.

17 Q. Okay. And this was sent on June 15th,
18 2021. Do you see that?

19 A. I do.

20 Q. And it was sent to scott.hilton@kba.law.
21 Do you see that?

22 A. Yes, I do.

23 Q. And Scott Hilton was your lawyer?

24 A. Yes.

25 Q. Okay. So the e-mail from James says

1 "Scott, I've had a chance to discuss some proposed
2 changes to the next generation of the Brixley
3 crossbody bag with my client, Thread Wallets LLC.
4 The idea is if your client is willing to sell off
5 its existing bags and make the changes suggested on
6 or in connection with any future crossbody bag, the
7 parties can respectively move forward," etc.

8 Do you see all that?

9 A. I do.

10 Q. Again, this is June 15th, 2021. If you
11 recall earlier, there was a point where you
12 messaged your manufacturer and you said "I need to
13 change my bag." And you started talking about
14 changes. Do you remember that?

15 A. I do remember that.

16 Q. Do you remember if that was before or
17 after June 15th?

18 A. I don't remember the exact date again.

19 Q. Let's go back and look.

20 A. Okay.

21 Q. So looking back at Brixley 554, this is
22 the message on April 28th where you said "I need to
23 change the design." Right?

24 A. Yes.

25 Q. Okay. So you started looking at new

1 designs on April 28th.

2 A. Okay.

3 Q. And then you discuss some different
4 things with Thea. And then on May 4th, you said
5 "So when can you make a sample?" Do you see that?

6 A. I do. In May.

7 Q. Do you remember if you got a sample at
8 that point or if you kept working on it?

9 A. I can't recall if I got a sample then.

10 Q. Okay. If you go to Brixley 563, on June
11 13th, at 9:38, Thea says "About crossbody bag."

12 And you respond "We are still trying to
13 figure it out." Do you see that?

14 A. I do.

15 Q. Okay. Okay. But at this point, you are
16 discussing changes with your manufacturer, right?

17 A. Yes.

18 Q. Okay. So let's go back to his e-mail.
19 There's a line, and then James says "Proposed
20 changes." We're going to take these one at a time.

21 A. Okay.

22 Q. First one is "Move/remove the D rings
23 from the back of the bag in favor of different
24 shaped rings and a different attachment point for
25 the rings." Do you see that?

1 A. I do.

2 Q. We've talked about this, but just for the
3 record, so he suggests that you use different
4 shaped rings, and you decided not to do that,
5 correct?

6 A. Correct.

7 Q. He also suggests either moving or
8 removing the D rings from the back of the bag in
9 favor of a different attachment point. Do you see
10 that?

11 A. I do.

12 Q. Did you make that change?

13 A. I added another D ring so it would have a
14 different attachment.

15 Q. Did you ever move the top rings from
16 where they are?

17 A. No, because then it would have completely
18 made the bag completely different, in a different
19 way that it couldn't have been a crossbody anymore.

20 Q. You think it could not have been a
21 crossbody if you moved the rings?

22 A. Huh-uh.

23 Q. Why is that?

24 A. Where else would I have put them?

25 Q. What if you put them on the sides?

1 A. How would I wear it as a crossbody after
2 that?

3 Q. Couldn't you just attach the rings to the
4 top?

5 A. But then what about the side?

6 (Discussion off the record.)

7 THE WITNESS: It wouldn't have made sense
8 if they were on the sides of the bag because if the
9 bottom D rings were there, if you were to attach
10 it, it wouldn't have made sense.

11 Q. (BY MS. FRANSEN) Okay. So they've got
12 to be on the top. Is that what you're saying?

13 A. Correct.

14 Q. Correct? Okay. So just to be clear, you
15 did not move the D rings from the top of the bag or
16 from the back of the bag; is that right?

17 A. Correct. I just added one.

18 Q. Okay. The next point says "Move the
19 Brixley logo/tag to a location different than the
20 location used by Thread." Do you see that?

21 A. I do.

22 Q. And so it says "For example, the front
23 branded logo tag should be removed from the bottom
24 right corner and the back branded logo tag needs to
25 be removed from the center on the back of the bag."

1 So let's take those one at a time.

2 Did you move the front brand logo tag
3 from the bottom right corner?

4 A. I did.

5 Q. Did you move the back branded logo from
6 the center on the back of the bag?

7 A. I moved it either up or down. I can't
8 remember what it was.

9 Q. You did move it, though?

10 A. I did.

11 Q. Is it still in the middle?

12 A. It is in the middle, but it's higher up.

13 Q. You believe it's higher up now?

14 A. No. It's lower. It's lower down.

15 Q. Okay.

16 A. It's more -- yeah. It's lower down.

17 Q. Okay. And the last bullet point says
18 "Adjust the front zipper placement or change --
19 adjust the front zipper placement up or change the
20 orientation of the zipper so as to make it
21 different than the placement or orientation used by
22 Thread." Do you see that?

23 A. I do.

24 Q. Did you adjust the zipper placement or
25 change the orientation of the zipper?

1 A. I believe I moved it up.

2 Q. You did?

3 A. I did.

4 Q. So earlier today when we looked at the
5 two, you said you did not change the zipper?

6 A. Oh, I thought you meant like the zipper
7 pull.

8 Q. No. So the location -- the location of
9 the zipper.

10 A. No. I moved the -- sorry. I thought you
11 meant zipper pull. Zipper moved up, but not the
12 pull.

13 Q. Okay. How far up did you move it?

14 A. I don't recall how far up I moved it.

15 Q. Okay. Did you move it far enough that
16 you think customers would notice?

17 A. No.

18 Q. Okay. Did you decide to move the zipper
19 before or after Thread suggested it? Well,
20 actually, let me back up. Did you ever see these
21 suggestions?

22 A. I did see these suggestions.

23 Q. Did you decide to move the zipper before
24 or after Thread suggested it?

25 A. I believe it was after they suggested it.

1 Q. Okay. Did you have video calls with Thea
2 about changing the bag?

3 A. I did.

4 Q. Okay. So you may have communicated the
5 zipper change in a video call?

6 A. Yes.

7 (Reporter request for clarification.)

8 Q. (BY MS. FRANDSEN) We're going to
9 introduce Exhibit-15.

10 (Exhibit-15 marked.)

11 Q. (BY MS. FRANDSEN) Kimberly, have you
12 seen this document before?

13 A. I can't recall if I have or not.

14 Q. Okay. Let's look at the address line
15 again. So "from" says "Scott Hilton." Was that
16 your lawyer at the time?

17 A. Yes.

18 Q. Sent on July 14th, 2021, to James
19 McConkie. That's the lawyer for Thread, right?

20 A. Yes.

21 Q. Scott says in the second paragraph "Prior
22 to your client's suggestions on elements Brixley
23 Bags could change, they'd worked on a new
24 prototype." Skip the next sentence, and he says
25 "The new design has most of the changes you

1 suggested, as well as several additional changes."

2 Do you see that?

3 A. I do.

4 Q. So again, it says "Prior to your
5 suggestions, Brixley had worked on a new
6 prototype." We've already talked about that. And
7 he says "The new design has most of the changes you
8 suggested." Do you agree with that sentence?

9 A. I do.

10 Q. Going back to the list, which changes can
11 you point to to suggest that you made most of the
12 changes they suggested?

13 A. A different attachment point because I
14 added another attachment and moved the logo. And I
15 adjusted the zipper up.

16 Q. Okay. So you made at least two, and then
17 if I agree with you that adding a ring makes a
18 different attachment point for the existing rings,
19 then that would be three, right?

20 A. Correct. Those are from the suggestions,
21 yes.

22 Q. Okay. We're going to introduce another
23 exhibit. Do you -- this is Exhibit-16.

24 (Exhibit-16 marked.)

25 Q. (BY MS. FRANDSEN) Do you recognize this?

1 A. I do.

2 Q. What is this?

3 A. This is a text message between Megan
4 Ethan and I.

5 Q. Who is Megan?

6 A. Megan is my sister-in-law.

7 Q. Up -- so let's double-check. So who was
8 sending the -- are -- whose phone is this
9 screenshot from?

10 A. That is, I think, mine. "Share your name
11 and photo." So I think that's my phone.

12 Q. Do you know who sent the text in the blue
13 bubbles?

14 A. That must have been me if I -- if this
15 was my phone.

16 Q. Does Megan do work for Brixley? Or does
17 she purchase from Brixley? Or do you know why you
18 would be exchanging money with her?

19 A. I don't know what that was for. I don't
20 know if it had anything to do with Brixley.

21 Q. Okay. Does she have any involvement with
22 Brixley?

23 A. No, she doesn't.

24 Q. On July 30th, 2021, she sends a text and
25 says "Any updates on the crossbody situation with

1 Thread?" Do you see that?

2 A. I do.

3 Q. What is the "crossbody situation with
4 Thread"?

5 A. She was meaning the cease and desist we
6 were sent.

7 Q. How did she know about that?

8 A. Like I had said before, Ethan's family
9 knows.

10 Q. Had you talked to her personally about
11 it?

12 A. I did not talk to her personally about
13 it.

14 Q. Did you ever respond to this text?

15 A. No. I did not respond to this text.

16 Q. Have you ever spoken with her about the
17 lawsuit?

18 A. No, I haven't, actually.

19 Q. I'm going to introduce another exhibit.
20 This is Exhibit-17.

21 (Exhibit-17 marked.)

22 Q. (BY MS. FRANSEN) Do you recognize this
23 document?

24 A. I can't recall if I've seen this one or
25 not.

1 Q. Let's look at the address line again. So
2 at the top, it says from James McConkie to Scott
3 Hilton. Do you see that?

4 A. I do.

5 Q. So that's another e-mail between James
6 McConkie and Scott Hilton?

7 A. Yes.

8 Q. We're actually going to scroll down and
9 look at one of the earlier e-mails on this chain.
10 If you go to the page marked Brixley 339. There's
11 an e-mail on there from Friday July 23rd, 2021,
12 from Scott Hilton to James McConkie. And just as a
13 reminder, the previous e-mail from James with the
14 suggestions was from June 15th, 2021.

15 A. Okay.

16 Q. This is later.

17 A. Okay.

18 Q. Scott says "Hi, James. Thanks again for
19 the call and for your help working through this.
20 I've spoken with our client about your suggestion
21 to move the D rings to the side of the bag, and
22 they're hesitant to do that because it would block
23 and interfere with the new belt loops they've added
24 to the design." Do you see that?

25 A. I do.

1 Q. Do you agree with that statement?

2 A. I do.

3 Q. How would moving the D rings to the side
4 of the bag block the belt loops?

5 A. It would block the belt loops -- I'm
6 trying to think of my bag. I guess it depended
7 where they were on the side of the bag, how close
8 they were to the end, if it would interfere with it
9 or not.

10 Q. So where would they -- where would you --
11 if you placed them towards the top, would they
12 interfere?

13 A. No. More towards like the back, they
14 interfere.

15 Q. Oh, so if you place the belt loops on the
16 back of the bag but more on the side --

17 A. Like more on the side.

18 Q. I see. So if you moved them around the
19 corner, then they would just be in the way where
20 you couldn't get a strap through?

21 A. Correct.

22 Q. Okay. Okay. So that was the moving that
23 you actually looked at?

24 A. I think so.

25 Q. Okay. Because we talked a little bit

1 about moving them to the side of the bag where the
2 main pocket is? And you said --

3 A. Oh, on those sides.

4 Q. Yes.

5 A. We looked at that, but then it didn't
6 make sense, because, like I said, the crossbody
7 wouldn't have made sense that way.

8 Q. Because the crossbody wouldn't hang the
9 way you want it to?

10 A. Correct.

11 Q. Okay. And then at the bottom, he says
12 "Some good news, Brixley has now sold through their
13 existing inventory of the previous crossbody bag
14 design as requested." Do you see that?

15 A. I do.

16 Q. Is that -- does that sound accurate?

17 A. That does sound accurate.

18 Q. We're going to scroll up to the bottom of
19 page Brixley 337. As you could see, the date on
20 this is August 11th, 2021. There's an e-mail from
21 James McConkie and he addresses it to Scott. Do
22 you understand this is an e-mail from James
23 McConkie to Scott Hilton?

24 A. I do.

25 Q. He says "It appears we are in agreement

1 that your client Brixley will change the location
2 of its zipper and logo in all future versions of
3 its crossbody bag offering," et cetera, et cetera.
4 "You have indicated that Brixley is unwilling to
5 relocate the bag's rings -- D rings to the side of
6 the bag rather than the back. Would it instead be
7 willing to use rings shaped differently from the D
8 rings? Something like square or circle-shaped
9 rings? This was a compromise idea advanced by
10 Thread Wallets." Do you see that?

11 A. I do.

12 Q. This is something that we have talked
13 about as well. So we'll -- we'll get back to that.
14 But I just want to point that out so that you have
15 context for a later e-mail. So that's August 11th,
16 2011. Do you remember if you had placed a mass
17 order for your new crossbody bags at that point?

18 A. I can't remember.

19 Q. Okay. On August 11th, Scott responds and
20 says "I will talk with our client about the shape
21 of the rings and let you know if it's a
22 possibility."

23 And over a month later, on September
24 18th, now we're looking at Brixley 336 to 337.
25 James says "Scott, putting this back on your radar.

1 Will you let me know where your client is on this
2 so we can get it wrapped up?"

3 And then if you keep scrolling, there's
4 no response from Scott on 336. James e-mails again
5 and says "Scott, haven't heard from you. I would
6 appreciate it if you let me know your client's
7 plans."

8 So this is -- this is all in September of
9 2021. Do you remember still dealing with the
10 Thread situation in September 2021?

11 A. What do you mean by "dealing with it"?
12 Sorry.

13 Q. Well, do you remember it still being an
14 open issue for you? It hadn't been resolved yet at
15 this point?

16 A. I can't fully recall.

17 Q. Okay. Looking back again, so James
18 brings up the topic of changing the D rings on
19 August 11th, 2021. Now we're into September 28th,
20 2021. Were you looking at -- at some point in
21 there, had you decided to just go ahead and order
22 your crossbody bag? And I'll scroll all the way up
23 so you can get a peak -- sneak preview of what
24 happens here.

25 A. So it looks like I had gone ahead with

1 the D rings.

2 Q. Okay. And you had -- it looks like you
3 had not responded to Thread yet; is that right?

4 A. I'm -- I don't know. I didn't. Those
5 weren't my e-mails, so I'm not sure.

6 Q. Had you instructed your lawyer to respond
7 to Thread yet at that point?

8 MR. TODD: I'll object.

9 Don't answer that question based on
10 privilege.

11 Q. (BY MS. FRANSEN) Do you -- so it looks
12 like you had decided to move ahead. Do you know
13 why you moved ahead before getting the feedback
14 from Thread?

15 A. I don't recall why.

16 Q. Okay. So on this top e-mail on 336,
17 there's an e-mail from James to Scott Hilton again
18 on September 28th. James says "Scott, just had a
19 look at Brixley's site. It appears they moved
20 forward on the redesign without a change in the
21 shape of the D rings as had been proposed by my
22 client." Do you see that?

23 A. I do.

24 Q. Do you agree that you moved forward on
25 the redesign without changing the D rings?

1 A. I do.

2 Q. And he says "I'll discuss with my folks
3 and let you know their reaction. Given that
4 Brixley has already moved forward and is offering
5 the new bags, I don't see a need for a written
6 agreement. Thread reserves all rights and will
7 keep an eye on this matter going forward." Do you
8 see that?

9 A. I do.

10 Q. Have you ever seen this e-mail before?

11 A. I don't recall if I've seen this e-mail
12 or not.

13 Q. Do you remember as of the end of
14 September whether you thought Thread was okay with
15 your new bag?

16 A. I think if I knew Thread wasn't okay with
17 my new bag, I wouldn't have gone forward with it.
18 I really didn't want to be in this position. I
19 don't want to be in this position. So if I knew
20 we'd get to this position, I wouldn't have. I
21 would have done something about it. So I think I
22 was under the impression that they were okay with
23 it.

24 Q. Okay. Is there anything in this e-mail
25 that tells you that they are okay with it?

1 A. I don't really see anything that says yes
2 or no.

3 Q. Do you see the sentence at the end that
4 says "Thread reserves all rights and will keep an
5 eye on that matter going forward"?

6 A. I do.

7 Q. Were you aware that Thread intended to
8 keep an eye on this matter going forward?

9 A. I was not aware of that.

10 Q. Do you know if Thread had an issued
11 patent at this point?

12 A. I had no idea.

13 Q. So as far -- this I think is where we're
14 going to get into trouble. So as far as you were
15 aware when you offered your first -- your first --
16 your second reiteration of the crossbody bag, as
17 far as you were aware, Thread was okay with it; is
18 that correct?

19 A. Correct.

20 Q. Do you know where you got that
21 impression?

22 A. I'm not sure.

23 Q. So you're not sure why you thought that
24 they were okay with the new version?

25 A. Yeah. Just -- I don't think I had heard

1 not to, so I thought it was okay to go ahead with
2 it.

3 Q. Okay. I'm going to introduce another
4 exhibit. This is Exhibit-18.

5 (Exhibit-18 marked.)

6 Q. (BY MS. FRANSEN) Have you seen this
7 document before?

8 A. I'm not sure I've seen it.

9 MR. TODD: Can you just give me one
10 second to pull it up? Thanks.

11 MS. FRANSEN: Yep. Let me know when
12 you're ready.

13 MR. TODD: It doesn't want to show up.
14 There we go. Okay. Thank you.

15 Q. (BY MS. FRANSEN) So, again, we will
16 look at the address line. Top line says from James
17 McConkie to Scott Hilton. Do you see that?

18 A. I do.

19 Q. We're going to actually go down to
20 Scott's e-mail at the bottom of the page. This is
21 from Scott Hilton to James McConkie on September
22 28th. Do you see that?

23 A. I do.

24 Q. And I can go back, but you can see.
25 James' e-mail was sent at 9:59 a.m. Scott's e-mail

1 was sent it 10:56 a.m., about an hour later. Scott
2 says "Thanks for the update, James. You're right.
3 It looks like they are available for preorder.
4 I'll check with our client on that. I do know that
5 Brixley had extended discussions with their
6 manufacturer on the other ring shapes we discussed,
7 and their manufacturer only deals with D rings for
8 functional reasons, the ability to attach the flat
9 side to the bag and the range of motion for the
10 clip on the rounded side. Other shapes of rings
11 weren't an option with their manufacturer." Do you
12 see that?

13 A. I do.

14 Q. So Scott is saying that the manufacturer
15 only deals with D rings for -- only deals with D
16 rings. Is that accurate?

17 A. That is what he's saying.

18 Q. Do you think that statement is accurate?

19 A. From our conversations with Thea, I think
20 I had options for other D rings, but I think the
21 functionality of them wouldn't have made sense.

22 Q. You also said earlier that you didn't
23 like the look of the other rings. Is that
24 accurate?

25 A. That is accurate.

1 Q. So do you think she could have done it if
2 you had liked the shape of the rings?

3 A. Yes.

4 Q. Okay. So when he says other shapes of
5 rings weren't an option with their manufacturer, do
6 you think that's inaccurate?

7 A. I --

8 THE WITNESS: Am I okay to go?

9 MR. TODD: Go ahead.

10 THE WITNESS: Okay. I do think that's
11 inaccurate.

12 Q. (BY MS. FRANSEN) Okay. The last thing
13 that Scott says on this e-mail is he says
14 "Hopefully the other design changes are
15 satisfactory to your client. We understand that
16 they will keep an eye on the matter moving
17 forward." Do you see that?

18 A. I do.

19 Q. Again, this is where you might have to
20 work things out with your lawyer on what you say.
21 But did you understand at that point that Thread
22 would keep an eye on the matter moving forward?

23 MR. TODD: I'll object on that one based
24 on privilege.

25 Don't answer that one.

1 And can I go back to the question before
2 and just object as it calls for speculation? Is
3 that okay with you?

4 MS. FRANSEN: I don't remember what the
5 question was.

6 MR. TODD: Can you read the last -- that
7 question? It was asking about what she understood
8 about the functionality --

9 MS. FRANSEN: Whether the statement
10 was -- whether she thinks that statement is
11 accurate.

12 MR. TODD: Yes.

13 MS. FRANSEN: I think you can put it on
14 the record, but I don't think it's an objection
15 that's going to stand either way.

16 MR. TODD: Okay. Okay.

17 MS. FRANSEN: Okay.

18 Q. (BY MS. FRANSEN) So, again, I'll just
19 say -- I'll just say on the record, if you had a
20 conversation with your lawyer -- so your lawyer
21 probably understands this better than you. And so
22 you decide what you do on your breaks, but you may
23 need to decide whether you're going to talk about
24 that on your break. But you've asserted a defense
25 in this case that says you thought Thread was okay

1 with your design. Do you understand that you
2 asserted that defense?

3 A. Correct.

4 Q. So if we go to trial and I ask you at
5 trial, "Why did you think Thread was okay with your
6 design?" and you say, "My lawyer said that it would
7 be okay," you can't say that unless you say it to
8 me today. Does that make sense?

9 A. Yes.

10 Q. Okay. So I'll ask you the question then.
11 Why did you think at the end of September
12 2021 that Thread was okay with your design?

13 A. I don't recall hearing anything that made
14 me think otherwise.

15 Q. Okay. I'm going to introduce another
16 exhibit. This is Exhibit-19.

17 (Exhibit-19 marked.)

18 Q. (BY MS. FRANDSEN) So at that point after
19 this e-mail was sent in September 2021, did you
20 move ahead with selling the new version of the bag?

21 A. I did.

22 Q. After you started selling the new version
23 of the bag, did you start getting comments on your
24 social media that mentioned that it looked similar
25 to Thread?

1 A. I guess I did. Right there.

2 Q. So I'm going to ask you about some of
3 these. This is Exhibit-19. Do you recognize this
4 post?

5 A. No. I don't recognize this post. I
6 can't see behind it.

7 Q. If you look at the bottom, do you see the
8 picture in the thumbnail?

9 A. Oh, yes.

10 Q. Do you recognize this picture?

11 A. I do.

12 Q. Who is that?

13 A. That is me.

14 Q. Are you holding a crossbody bag?

15 A. I am.

16 Q. Is this a post for your crossbody bag?

17 A. This is a post for my crossbody bag.

18 Q. Where -- for the record, we're looking at
19 Thread 753 in Exhibit-19. If you look at the
20 comments, the top comment says "It looks somewhat
21 similar to the ThredUp bags." Do you see that?

22 A. I do.

23 Q. Have you seen that comment before?

24 A. I have not seen that comment.

25 Q. Do you know if that comment is still on

1 this post?

2 A. I have no idea.

3 Q. If it's not on this post, what do you
4 think happened to it?

5 A. I don't know. I don't delete my
6 comments.

7 Q. So all the comments are still there?

8 A. Yes.

9 Q. Do you ever hide comments?

10 A. No.

11 Q. What do you think this person means by
12 "the ThredUp bags"?

13 MR. TODD: Objection. Calls for
14 speculation.

15 Answer the question.

16 THE WITNESS: Answer it?

17 MR. TODD: Yeah.

18 THE WITNESS: I'm not sure what ThredUp
19 is, but possibly Thread bags. I don't know what
20 they meant by the "up" part.

21 Q. (BY MS. FRANSEN) Do you think they're
22 talking about the Thread crossbody bags?

23 A. Possibly.

24 Q. There's another copy on there by ekafoxy
25 that says "I think it's a knockoff of Thread." Do

1 you see that?

2 A. I do see that.

3 Q. Did you see that comment?

4 A. Just now. Right now, I'm seeing it.

5 Q. Okay. You've never seen it before?

6 A. I have not.

7 Q. Do you think they're talking about Thread
8 Wallets?

9 A. I do believe they're talking about Thread
10 Wallets.

11 Q. Do you think they're talking about
12 Thread's crossbody bag?

13 A. Most likely, yes.

14 Q. Do you think this comment is still on
15 this post?

16 A. Yes, because I don't delete my comments.

17 Q. Going on to 7 -- Thread 754. Does this
18 look like the same post?

19 A. It does look like the same post.

20 Q. Do you know if this was on Instagram?

21 A. It most likely was on Instagram.

22 Q. Okay. There's a comment there by
23 arisuarsrexx that says "But this -- but like this
24 is exactly like Thread's product." Do you see
25 that?

1 A. I do see that.

2 Q. Do you think they're talking about the
3 Thread crossbody bag?

4 A. I do.

5 Q. Do you know whether this post is
6 promoting the second version of the bag or the
7 original version?

8 A. That is the second version of the bag.

9 Q. How do you know that?

10 A. Because I remember posting that video and
11 it going viral.

12 (Reporter request for clarification.)

13 Q. (BY MS. FRANDSEN) So this video went
14 viral?

15 A. It did.

16 Q. Okay. There's another comment on here
17 that says -- from katelovesbreakfast that says
18 "Thread knockoff." Have you seen that comment
19 before?

20 A. Just right now.

21 Q. Do you think she's talking about the
22 Thread crossbody bag?

23 A. I do.

24 Q. Do you think these people who are
25 commenting think your bag looks like Thread's bag?

1 MR. TODD: Objection. Calls for
2 speculation. You can answer.

3 THE WITNESS: Some of them, yes.

4 Q. (BY MS. FRANSEN) Moving on to 756, is
5 this the same post?

6 A. It looks like it, yes.

7 Q. So there's two comments on here. The top
8 one by vrpadilla says "How does this compare to
9 Thread Wallets?" Did you see that?

10 A. Just right now.

11 Q. You have never seen that before?

12 A. I have not.

13 Q. As far as you know, is that still on the
14 post?

15 A. Yes.

16 Q. There's a -- there's a bottom comment
17 that is cut off so I don't have the name, but all
18 you can see is "Actually ended up buying a
19 Thread." Do you see that?

20 A. I do.

21 Q. Have you ever seen a comment that said
22 that on this post before?

23 A. I had not.

24 Q. And as far as you know, those are all
25 still on there?

1 A. Yes.

2 Q. Moving on to Thread 990, some of these
3 comments are the same. Is this the same post that
4 we've been talking about?

5 A. Yes.

6 Q. There's a comment by itsbriannabill that
7 says "@ekafoxy" -- well, so we've looked at the
8 ekafoxy comment that says "I think it's a knockoff
9 of Thread." And then itsbriannabill responds and
10 says "@ekafoxy, or is Thread a knockoff of this?"
11 Do you see that?

12 A. I do.

13 Q. Have you ever seen that comment by
14 Brianna Bill before?

15 A. I don't recall seeing that comment, no.

16 Q. I'm going to look at Thread 1104. Do you
17 recognize this?

18 A. I do.

19 Q. What is this?

20 A. This is a video of me.

21 Q. Was it posted on TikTok?

22 A. I believe so. Oh, it says "TikTok" up
23 there.

24 Q. Are you looking at the URL?

25 A. I am looking at the URL.

1 Q. Was this posted on your Brixley account
2 or your personal account?

3 A. This was personal.

4 Q. How do you know that?

5 A. Because it says "Kimberly O'Connell."

6 Q. Do you know what you said in this video?
7 I don't need the details. Just generally what the
8 video is about.

9 A. Just the functions of my crossbody and
10 showing the interior of it.

11 Q. If you look at the comments, there's a
12 comment from Shaydie that says "Thread Wallet just
13 posted an exact bag from this. Hopefully they
14 didn't steal your idea." Do you see that?

15 A. I do.

16 Q. Have you seen that comment before?

17 A. I have not.

18 Q. Was this your original bag or the second
19 version?

20 A. This is the second version.

21 Q. How do you know?

22 A. Because it has the embroidery of the
23 Brixley logo.

24 Q. So do you think this person thinks Thread
25 Wallets' bag looks like yours?

1 MR. TODD: Objection. Calls for
2 speculation.

3 THE WITNESS: Possibly.

4 Q. (BY MS. FRANSEN) Next page, Thread
5 1179. Do you recognize this?

6 A. I do.

7 Q. What is this?

8 A. This is a post that I made.

9 Q. And was this on the Brixley Bags account
10 or your account?

11 A. This was Brixley Bags.

12 Q. There's a comment here from
13 simply_david_c that says "Question, I have a bag
14 like this from Thread." Do you see that?

15 A. I do.

16 Q. Do you think this person's talking about
17 the Thread crossbody bag?

18 A. I do.

19 Q. Why do you think that?

20 A. Because he mentioned the word "Thread."

21 Q. Moving on to Thread 1180. Do you know
22 what this is?

23 A. I do.

24 Q. What is this?

25 A. This is a post on Instagram.

1 Q. Is this on the Brixley Bags Instagram?

2 A. It is.

3 Q. Is this promoting the new -- sorry -- the
4 second version of the crossbody bag?

5 A. It is.

6 Q. Do you see the comment by jayee.baby that
7 says "@thread_wallets has the exact same bag now
8 LOL"?

9 A. I do.

10 Q. Have you seen that comment before?

11 A. I have not.

12 Q. Do you think that comment is still on
13 this post?

14 A. Yes.

15 Q. If it's not, do you know what would have
16 happened to it?

17 A. No, I don't know what would have happened
18 to it.

19 Q. You think this person thinks Thread
20 Wallets' bag is similar to yours?

21 MR. TODD: Objection. Calls for
22 speculation.

23 THE WITNESS: Possibly, yes.

24 Q. (BY MS. FRANSEN) One more. Thread
25 1244. This one, there's no post. There's just a

1 handful of comments. Do you recognize any of these
2 comments or any of the people who left them?

3 A. I do not.

4 Q. Okay. So of all of the comments that we
5 just looked at, are you familiar with any of the
6 people who left them?

7 A. No, I'm not.

8 Q. So as far as you're aware, these are all
9 just random consumers who believe the bags looked
10 similar?

11 A. Yes.

12 Q. Have there been any other comments on
13 your social media posts that reference Thread?

14 A. Not that I'm aware of right now. I'll be
15 honest with you, I don't go through my comments. I
16 have a lot of other things on my mind that I don't
17 have the time to go through all the comments.

18 Q. So you haven't seen any other comments?

19 A. I have not.

20 Q. Have you deleted any other comments
21 referencing Thread?

22 A. Not that I'm aware of, no.

23 Q. Have you ever hidden any comments?

24 A. Not that I'm aware of, no.

25 Q. Does anyone else access Brixley's social

1 media pages besides you?

2 A. Yeah. Sydra.

3 Q. Sydra does?

4 A. She does.

5 Q. Would she ever delete a comment?

6 A. Not that I'm aware of.

7 Q. Would she ever review the comments?

8 A. Review you said?

9 Q. Yes.

10 A. Yeah. She probably reviews them, but I
11 don't -- we don't respond to comments.

12 Q. Okay.

13 A. Most comments. There's a lot of them.

14 Q. I'm introducing another exhibit. This
15 one might take a minute to load as well. Let me
16 know if you want me to wait.

17 MR. TODD: Exhibit-20?

18 MS. FRANSEN: Yes.

19 (Exhibit-20 marked.)

20 MR. TODD: Okay. Give me a second and
21 see if it loads in here. Yeah. The temperature is
22 flipped now.

23 MS. FRANSEN: Yeah. It is also showing
24 up behind you if you don't want to wait.

25 MR. TODD: Yeah. We can -- we can

1 proceed.

2 Q. (BY MS. FRANDSEN) Kimberly, we've
3 introduced Exhibit-20, and there are a lot of pages
4 in this. We're not going to go through all of
5 them.

6 Are you aware generally that people have
7 left comments on Thread's social media tagging or
8 referencing Brixley?

9 A. I've known of a few, but like I said, I
10 don't go through those. And so I don't look at my
11 mentions very often at all, actually. So I don't
12 know how to answer that.

13 Q. Okay. So you're aware generally, but you
14 don't know specific examples?

15 A. Correct.

16 Q. Have you seen any specific examples?

17 A. I've seen specific ones, but I don't know
18 where or when.

19 Q. Do you remember what they said?

20 A. Something along the lines of that.

21 Q. You pointed to page Thread 666?

22 A. Yes.

23 Q. Do you know any of the people who leave
24 comments tagging Brixley on Thread's social media?

25 A. I do not.

1 Q. Like I said, we're not going to go
2 through all of these. I'm just going to show you a
3 few examples. We're going to go to Thread 671.
4 And your lawyer will have a copy of all of these
5 exhibits even before the transcript is ready. So
6 if you want to look at this document later, you
7 can. I'm just not going to go through all of them.

8 A. Oh, okay.

9 MR. TODD: You said Threads 671?

10 MS. FRANSEN: Yes, that's right.

11 Q. (BY MS. FRANSEN) So if you look at
12 Threads 671, there's a comment at the top from
13 piper_reid that says "Check out Brixley Bags. I
14 got mine from them and I love it." Do you see
15 that?

16 A. I do.

17 Q. And there's a response from
18 allisyn.taylor saying "@piper_reid, I have a
19 Brixley too. Love mine. What's up with this brand
20 having the exact same design?" Do you see that?

21 A. I do.

22 Q. And then there's a response from Thread
23 that says "Hey, Allisyn. Unfortunately, we've been
24 hearing this a lot. We actually launched our
25 crossbody bag in August of 2020 (with a patent

1 pending) and Brixley launched the preorder for
2 their bags in November of 2020." Do you see that?

3 A. I do.

4 Q. So does that give you an idea of where
5 these comments were left?

6 A. What -- oh, like the -- what do you mean
7 by that? Sorry.

8 Q. So do you -- do you know -- do you have
9 an idea of where -- whose social media these
10 comments were posted to?

11 A. I'm assuming Thread because they're
12 responding to it.

13 Q. Yeah. Would you agree that Piper Reid
14 and Allisyn Taylor both thinks that Thread's bag
15 looks a lot like Brixley's bag?

16 A. Possibly Allisyn, but I'm not sure about
17 Piper.

18 Q. Okay. Because Allisyn says "This brand
19 has the exact same design"; is that right?

20 A. Yes. But Piper says that she just loves
21 mine.

22 Q. Okay. Do you know why she would tag you
23 if she didn't think the bags were the same?

24 A. I don't know. I'm not sure who Piper is.

25 Q. Going to go down to Thread 675. You can

1 see the Piper Reid comment is there at the bottom.

2 Do you see that?

3 A. Oh, okay.

4 Q. So it looks like this is the same post,
5 right?

6 A. It looks like it.

7 Q. The comment above is from brit.jxx. It
8 says "Shop @brixleybags instead. She is a small
9 business owner. I had this exact design way before
10 Thread Wallets just posted." Do you see that?

11 A. I do.

12 Q. Do you agree that she thinks that
13 Thread's design is the exact same as Brixley's?

14 A. That's what she's saying.

15 Q. We're going to look at Thread 677. Do
16 you recognize this image on the left?

17 A. I do.

18 Q. Do you know what that is?

19 A. It's a Thread crossbody bag.

20 Q. And do you see the Thread Wallets handle
21 at the top?

22 A. I do.

23 Q. So does this look like a Thread post?

24 A. Yes.

25 Q. There's a comment from sidneyleemiller

1 saying "This is literally just @brixleybags.

2 Next." Do you see that?

3 A. I do.

4 Q. Have you ever seen this comment before?

5 A. I have not.

6 Q. Did she tag Brixley Bags in this comment?

7 A. She did.

8 Q. Do you agree that she thinks this bag is
9 the same as Brixley's?

10 A. That's what she's saying, yes.

11 Q. So, again, there are a lot of these. You
12 can go through and look at them later. I'm just
13 going to show you a couple. Well, more than a
14 couple.

15 Okay. Thread 960. Can you see the word
16 "reels" at the top?

17 A. I do.

18 Q. Do you know what that means?

19 A. Reels are like short videos.

20 Q. On social media?

21 A. Yes.

22 Q. Okay. So -- and then you can see a bag
23 in the background. Do you see that?

24 A. I do.

25 Q. Do you see the comments that say -- from

1 snm5697 that says "Brixley Bags has that exact
2 design"?

3 A. I do see that.

4 Q. And then there's another one from
5 littlelakelife that says "@brixleybags have it. I
6 love mine and it's easy to clean." Do you see
7 that?

8 A. I do.

9 Q. So do you agree that both of these
10 comments suggest that these people think that
11 Thread's bag and Brixley's bag look the same?

12 A. Yes.

13 Q. I'm going to go down to Thread 962.
14 Again, do you see the word "reels" at the top?

15 A. I do.

16 Q. Do you see the comment from
17 meredith.hoose?

18 A. I do.

19 Q. She says "This is a @brixleybags." Do
20 you see that?

21 A. I do.

22 Q. Do you agree that this person thinks that
23 Thread's bag -- crossbody bag and Brixley's bags
24 look the same?

25 A. I do.

1 Q. We're going to look at Thread 963. Do
2 you see the "Thread Wallets" at the top?

3 A. I do.

4 Q. It says "Good-bye to bulky purses. Get
5 the slim and stylish Crossbody by Thread." Do you
6 see that?

7 A. I do.

8 Q. There's a comment by Aryn Lawson. It
9 says "Check out Brixley Bags. They have pockets
10 for cards. They literally look exactly like
11 these." Do you see that?

12 A. I do.

13 Q. Do you agree that this person thinks that
14 Brixley's bag looks like Thread's bag?

15 A. Yes. That's what she's saying.

16 Q. Okay. There -- we're going to go to
17 Thread 983. There's a caption at the bottom that
18 says "Add a comment for Thread Wallets." And you
19 can see the thumbnail there that looks like the
20 same bag -- Thread crossbody bag we looked at
21 earlier?

22 A. Yes.

23 Q. There are a couple comments on here. The
24 first one -- not the first one. There's a comment
25 by skylervictoria that just says "@brixleybags."

1 Do you see that?

2 A. I do.

3 Q. Have you seen this comment before?

4 A. I have not.

5 Q. Do you know why someone would just tag
6 Brixley Bags on a Thread crossbody ad?

7 A. I'm not sure, no.

8 Q. There's another comment by evln.r that
9 says "@brixleybags duuuuuupe." Have you seen that
10 comment before?

11 A. I have not.

12 Q. Do you agree this person is saying that
13 Thread's bag looks like a dupe of Brixley Bags?

14 A. I believe that's what she's saying.

15 Q. Do you know what a dupe is?

16 A. I don't know exactly what a dupe is. I
17 don't know the definition of a dupe.

18 Q. Okay. Have you seen that on social media
19 before?

20 A. I've heard of dupe, yeah.

21 Q. Okay.

22 A. I'm not as young and hip anymore, I
23 guess.

24 Q. I am not as young and hip as you, so...
25 Let see. We're looking at Thread 985.

1 Again, you can see the thumbnail of the Thread
2 crossbody bag. Do you see that?

3 A. I do.

4 Q. There's a comment at the top from
5 manny_bakes that says "Saw these with the name Brix
6 Bags. You all just getting these from China, huh?"
7 Do you see that?

8 A. I do.

9 Q. Do you agree that person thinks that
10 Thread's bag looks like yours?

11 A. I think they think that we're getting
12 both of our bags from China.

13 Q. Okay. Do you see the comment from
14 ohdamsam?

15 A. I do.

16 Q. It says "Looks exactly like
17 @brixleybags." Do you see that?

18 A. I do.

19 Q. Have you seen that comment before?

20 A. I have not.

21 Q. Do you agree this person thinks Thread's
22 bag looks exactly like Brixley's Bags?

23 A. I do.

24 (Discussion off the record.)

25 Q. (BY MS. FRANSEN) We're looking at

1 Thread 987. Do you see the thumbnail with Thread's
2 crossbody bag?

3 A. I do.

4 Q. There is a comment by thejessupjourney.
5 They say "Isn't this @brixleybags design?" Do you
6 see that?

7 A. I do.

8 Q. Have you seen this comment before?

9 A. I have not.

10 Q. Do you agree that this person thinks that
11 Thread's bag looks like Brixley's bag?

12 A. Yes.

13 Q. There's a comment below by karibby09 that
14 just says "@brixleybags." Do you see that?

15 A. I do.

16 Q. Have you seen this comment before?

17 A. I have not.

18 Q. The bottom comment is by lillytannerrr.
19 It says "Not them just copying right off Brixley
20 SMH." Do you see that?

21 A. I do.

22 Q. Do you agree this person thinks that
23 Thread copied Brixley?

24 A. I do.

25 Q. We're going to go to Thread 1003. It

1 says "reels" at the top. And you can see a bag in
2 the background with a Thread logo. Do you see
3 that?

4 A. I do.

5 Q. There's a comment by aleesa.lavrenko. It
6 says "Brixley already did this." Do you see that?

7 A. I do.

8 Q. Do you agree that this person thinks that
9 Thread's design looks like Brixley's?

10 A. I think they think that I was the first
11 one who did it.

12 Q. But do you think that they think that the
13 bags are the same?

14 MR. TODD: Objection. Calls for
15 speculation.

16 You can answer.

17 THE WITNESS: Possibly.

18 Q. (BY MS. FRANSEN) So you could see --
19 and I can scroll slower. There are a lot of
20 comments. This exhibit is 172 pages. And I can't
21 guarantee that we don't have any duplicates in here
22 because there were a lot. And I'm going to show
23 you some more of these comments, but after seeing
24 this, wouldn't you agree that there are at least
25 some consumers who think that Brixley's bag looks

1 like Thread's bag?

2 MR. TODD: Objection. Calls for a legal
3 conclusion.

4 But go ahead.

5 THE WITNESS: There are some people who
6 do assume that, yes.

7 Q. (BY MS. FRANSEN) Okay. This is Thread
8 1019. This is another Thread post. Do you see the
9 comment by omgee.alyssa that says "@brixleybags
10 uh"?

11 A. Yes.

12 Q. Have you seen that comment before?

13 A. I have not.

14 Q. The next comment is by zoegrebin. It
15 says "This is a Brixley Bag dupe. Get a Brixley."
16 Do you see that?

17 A. I do.

18 Q. Do you agree this person is saying that
19 this bag is a duplicate of Brixley's bag?

20 A. That is what she's saying.

21 Q. The next comment is by mariaaluvv that
22 says "These look like @brixleybags." Do you see
23 that?

24 A. I do.

25 Q. Do you agree this person is saying that

1 Thread's bag looks like Brixley Bags?

2 A. Yes.

3 Q. I'm going to go backwards back to Thread
4 986. And you can again see that thumbnail in the
5 corner with Thread's bag. There's a comment and
6 then it says "Thread Wallets" at the top. "Say
7 good-bye to bulky purses. Get the slim and stylist
8 Crossbody by Thread."

9 And there's a comment by jordan_luna that
10 says "@brixleybags, you stole their idea or they
11 stole yours?" Do you see that?

12 A. I do.

13 Q. Have you seen that comment before?

14 A. I have not.

15 Q. How would you respond to that comment?

16 A. I wouldn't respond.

17 Q. If you had to, if someone came up to you
18 and asked you that question, what would you say?

19 MR. TODD: Objection. Calls for
20 speculation. Hypothetical.

21 Go ahead.

22 THE WITNESS: I would say I did not steal
23 their design. I don't know if they stole mine, but
24 I definitely did not steal their design.

25 Q. (BY MS. FRANDSEN) Okay. This is Thread

1 989. And you can see that same picture we've been
2 looking at, that Thread crossbody bag.

3 A. Yes.

4 Q. There's a comment by i4hikachu. It says
5 "The way this is a carbon copy of the Brixley bag."
6 Do you see that?

7 A. I do.

8 Q. Do you agree that this person is saying
9 that Thread's bag is a carbon copy of Brixley's?

10 A. I do.

11 Q. Okay. It's 3:15. It's been about an
12 hour since our last break. Do we need another
13 break or are we good?

14 A. I would love another break.

15 Q. Okay. Let's break. Off the record.

16 (Off the record from 3:16 p.m. to
17 3:26 p.m.)

18 Q. (BY MS. FRANSEN) I'm going to introduce
19 another exhibit. This is going to be Exhibit-21.

20 (Exhibit-21 marked.)

21 MS. FRANSEN: And, Bud, I think it's
22 going to be pending for a minute, but you can see
23 it on the screen behind you once I open it.

24 MR. TODD: I'm curious if that will up --
25 upload before 20.

1 MS. FRANDSEN: Yeah.

2 THE WITNESS: Are the rest -- whole rest
3 have pictures -- like, does the rest of the program
4 have pictures? Like, exhibits?

5 Q. (BY MS. FRANDSEN) Yeah. We'll just be
6 doing exhibits the rest of the time.

7 A. Okay. I was just curious.

8 Q. Yeah. I'll have a few questions that are
9 unrelated to exhibits, but it's mostly just
10 exhibits at this point.

11 A. Got it. Okay.

12 Q. So this is Exhibit-21. Do you
13 recognize -- I'll scroll through it a little bit
14 for you, but do you recognize these?

15 A. Yes. These are DMs that I had sent over.

16 Q. When you say "DMs" --

17 A. Sorry. Direct messages.

18 Q. Are those on social media?

19 A. That is. That is on Instagram.

20 Q. And when you say you sent them over, you
21 mean you sent them to us?

22 A. Yes.

23 Q. Okay. Let's look at this first one. Can
24 we go off the record for one sec?

25 (Off the record from 3:28 p.m. to

1 3:29 p.m.)

2 Q. (BY MS. FRANDSEN) Kimberly, let's look
3 at Brixley -- I believe it's 2108, although it's
4 hard to see the number at the bottom. Do you know
5 what platform this message was sent through?

6 A. Yes. That is Instagram.

7 Q. There's a name at the top, Kaylee Moos
8 Larsen. Do you see that?

9 A. I do.

10 Q. Do you know what that is?

11 A. I know she's a follower of mine. I don't
12 know her personally, no.

13 Q. Okay. There's a screenshot on here
14 that's blurry on my end and yours.

15 A. Yes.

16 Q. Do you know what that screenshot shows?

17 A. To be honest with you, I do not.

18 Q. Okay.

19 A. I do not.

20 Q. Okay. Well, it's hard to see. So
21 there -- there's a message in a gray bubble. Is
22 that from Kaylee?

23 A. Yes.

24 Q. And is the blue response from you --
25 sorry. Is the blue response below from you?

1 A. Yes.

2 Q. Her message says "Girl. What the heck?
3 Yours are so much better. Thread just wants to be
4 the only one making them and doesn't want anyone
5 else to have the same thing." Do you see that?

6 A. I do.

7 Q. And you say "Thank you so much. Yeah,
8 it's kinda crappy."

9 A. Yeah.

10 Q. Do you know what this message is about?

11 A. It's too blurry for me to completely
12 understand what the message is about.

13 Q. Okay. Do you know why she would be
14 referencing Thread in a message to you?

15 A. I'm assuming that's what the screenshot
16 was about, but I'm not sure what the screenshot
17 was.

18 Q. Okay. On Brixley 2109, there's a message
19 from Avery Roques. Do you see that?

20 A. I do.

21 Q. Did she send the message in gray?

22 A. Yes.

23 Q. And did you send the response in blue?

24 A. I did.

25 Q. So she says "Did Thread Wallet steal your

1 crossbody bag design?" Do you see that?

2 A. I do.

3 Q. And you respond "No. There are just tons
4 of crossbodies out there, but ours are much
5 different than theirs." Do you see that?

6 A. I do.

7 Q. Did you write that response?

8 A. I did.

9 Q. Did you have help writing it?

10 A. I did not.

11 Q. Do you see the date on this message?

12 A. I do.

13 Q. That says November 30th, 2021?

14 A. Yes.

15 Q. Why did you say there are tons of
16 crossbodies out there?

17 A. Because there are.

18 Q. So were you trying to say that there's a
19 lot of bags that look like Thread Wallets' bag?

20 A. No. I just was thinking that there are a
21 ton of crossbodies out there. So I didn't want to
22 say they stole my design. I don't talk crap about
23 anyone, so I didn't want to say, "Yeah, they stole
24 my design. They're the worst people ever." I
25 don't say that about people. So -- and especially

1 to my followers. So I just was just saying there's
2 a bunch out there. Everyone's is different. And I
3 didn't want to talk about it anymore.

4 Q. Did you think that Thread stole your
5 design?

6 A. I didn't think that Thread stole my
7 design, no.

8 Q. Okay. I'm going to go to Brixley 2110.
9 This one says "Jentry Miller" at the top. Do you
10 see that?

11 A. I do.

12 Q. Is this another message that was sent
13 through Instagram?

14 A. It is.

15 Q. Do you see the picture at the top of the
16 messages?

17 A. I do.

18 Q. It says "@thread_wallets @_chloechloee
19 making us wish we were some..." and then there's a
20 Thread crossbody in the picture?

21 A. I do.

22 Q. And then there's a message below in gray.
23 Is that a message from Jentry?

24 A. Yes.

25 Q. And then your responses are in blue?

1 A. Correct.

2 Q. She says "I saw an ad for these. I
3 thought they were yours at first but then realized
4 Thread had been making them for a while." Do you
5 see that?

6 A. Yes.

7 Q. And you say "Yeah, but ours have a lot of
8 differences that make ours super rad." Do you see
9 that?

10 A. I do.

11 Q. Do you agree that this person thinks that
12 Thread's bag looks like Brixley's bag?

13 A. I do.

14 Q. Moving on to page Brixley 2111. Were
15 these messages sent through Instagram?

16 A. They were.

17 Q. There's a name at the top, Stevii Lynn
18 Krol. Do you see that?

19 A. I do.

20 Q. Did she send the messages in gray?

21 A. She did.

22 Q. And then you sent the responses in blue?

23 A. I did.

24 Q. Has she messaged you before?

25 A. I can't recall.

1 Q. You probably have a lot of people
2 messaging you?

3 A. More than you probably would think.

4 Q. On July 9th, 2022, she says "So I wanted
5 to let you know because I just saw it, there's an
6 ad going around from Thread Wallet with a crossbody
7 just like yours." Do you see that?

8 A. I do.

9 Q. And you say in response "Thank you." Who
10 wrote that response?

11 A. I did.

12 Q. Or you say "Thank you so much for letting
13 me know."

14 A. Yes.

15 Q. Why did you send that response?

16 A. Kind of the same reason I did before, is
17 because I don't like to talk about it. I don't
18 want to get into it. So I just kind of let them
19 know thanks for letting me know. Go on with my
20 day.

21 Q. Kind of an awkward situation?

22 A. Yeah. I don't -- it's just something I
23 don't want to speak about.

24 Q. Yeah. Going on to Brixley 2112. Is --
25 is this an Instagram message string as well?

1 A. Yes, it is.

2 Q. Do you see the name Claire Sonksen?

3 A. I do.

4 Q. Is she the one who was messaging you?

5 Well, actually, let me back it up. Are
6 these message -- these is a message to you,
7 correct?

8 A. Yes.

9 Q. And the message is from Claire Sonksen?

10 A. Yes.

11 Q. And she sent the message in gray?

12 A. Yes.

13 Q. And you sent the message in blue?

14 A. I did.

15 Q. She says a lot of things. Towards the
16 end, she says "I hate how it looks like Thread
17 Wallets has completely copied you." Do you see
18 that?

19 A. I do.

20 Q. Do you agree that she thinks that Thread
21 Wallets copied you?

22 A. Yes.

23 Q. Do you think she's talking about their
24 crossbody bag?

25 A. Yes.

1 Q. Then the last page is Brixley 2113. This
2 is by jackedpeanut. Is this an -- another
3 Instagram message?

4 A. This is.

5 Q. Did jackedpeanut send the message in
6 gray?

7 A. He did. Or she. I don't know if it's a
8 boy or girl.

9 Q. That's why I used the handle because I
10 can't tell either.

11 A. Yes.

12 Q. Did you send the response in blue?

13 A. I did.

14 Q. She says -- or he -- "I am so devastated
15 I purchased from Thread Wallets before finding your
16 company through Instagram ads. They took your
17 design and made it worse." Do you see that?

18 A. I do.

19 Q. Which design do you think you're --
20 they're talking about?

21 A. Sorry. Say that one more time.

22 Q. They say "They took your design."

23 A. Yes.

24 Q. When they say "your design," which design
25 do you think they're talking about?

1 A. Most likely the crossbody sling.

2 Q. Because there's not any other products
3 that Thread has that are similar to yours?

4 A. Correct.

5 Q. Okay. So do you think that at least some
6 of these people also think that Thread's
7 crossbody -- crossbody bag is similar to Brixley's
8 crossbody bag?

9 A. Yes.

10 Q. Okay. We're going to introduce
11 Exhibit-22.

12 (Exhibit-22 marked.)

13 Q. (BY MS. FRANSEN) I'll scroll through it
14 briefly so you can see what it is.

15 A. Okay.

16 Q. Do you recognize this?

17 A. I do recognize this.

18 Q. What is this?

19 A. This is a text from Megan.

20 Q. Does this look like a true and accurate
21 copy of these texts?

22 A. This does.

23 Q. Do you know if these texts were sent
24 to -- oh, wait. Let me back up.

25 When you say Megan, are you talking about

1 Megan Davies?

2 A. Yes.

3 Q. That's your sister-in-law?

4 A. It is.

5 Q. Do you know if these texts are with you
6 or with Ethan?

7 A. I don't know if these are through Ethan
8 or through me.

9 Q. Do you know if you've seen these before?

10 A. Can I read it really quick?

11 Q. Yeah. Definitely. And let me know if
12 you want me to scroll.

13 A. I believe these are Ethan's. Yeah.
14 These are Ethan's. These are not from me.

15 Q. Okay. Has Megan mentioned your -- has
16 Megan mentioned to you before that your followers
17 have been commenting on Thread's social media?

18 A. I don't recall her mentioning the
19 followers. I do recall her mentioning the owner of
20 Thread Wallets' wife or something like that
21 commenting to people.

22 Q. Okay. Do you remember what she said to
23 you about that?

24 A. I think she thought it was stupid and
25 kind of irresponsible of the owner to be posting

1 that stuff.

2 Q. And why is that?

3 A. Because --

4 Q. If you remember what she said. If you
5 don't, that's okay.

6 A. I don't recall exactly. It was just
7 passing by me and her.

8 Q. Okay. This is Exhibit-23.

9 (Exhibit-23 marked.)

10 Q. (BY MS. FRANDSEN) Do you recognize this?

11 A. I do.

12 Q. What is this?

13 A. This is a text between Ethan and I, my
14 husband.

15 Q. Did you send the text in the blue
16 bubbles?

17 A. I did. Yes, I did.

18 Q. Did Ethan send the texts in the gray
19 bubbles?

20 A. He did.

21 Q. This is on June 3rd, 2022. Do you see
22 that?

23 A. I do.

24 Q. You say "Thread deleted all of their
25 comments." Do you see that?

1 A. I do.

2 Q. What were you talking about?

3 A. I don't know exactly what comments I'm
4 talking about, but I remember them deleting
5 comments that they were saying about us.

6 Q. So you think -- you remember Thread
7 leaving comments about Brixley?

8 A. Yes, but I don't recall what they were or
9 when it was.

10 Q. Okay.

11 A. But I do remember them deleting them.

12 Q. Okay. Do you know which platform it was
13 on?

14 A. Instagram.

15 Q. Okay.

16 A. Or Facebook.

17 Q. Okay.

18 A. I can't remember which one.

19 Q. Okay. And Ethan says "Because they know
20 how bad that looks. At least we have record of
21 it." Do you see that?

22 A. I do.

23 Q. Did you take screenshots of those
24 comments before they were deleted?

25 A. I thought I did.

1 Q. Okay. That's something that we did not
2 receive that I'm aware of.

3 A. Okay. Okay.

4 Q. So I'll just make a note of that to your
5 counsel to check for that.

6 A. Okay. Okay.

7 Q. So, again, this was in June of 2022. So
8 at that point, did you feel that -- or did you
9 understand that Thread was okay with you selling
10 your crossbody bag?

11 A. I can't recall. I don't remember when
12 things between the lawyers were going on.

13 Q. Okay. Well, I'll tell you the updated
14 cease --

15 A. I was going to say, what were the dates?
16 I'm mixed up about the dates.

17 Q. I'll show you the cease and desist later.
18 But the cease and desist that was sent was in I
19 believe October, but it was 2023. So up here,
20 we're looking at 2022. So that's after the 2021
21 letter.

22 A. Okay. Okay.

23 Q. And before the 2023 letter.

24 A. Got it. Thank you.

25 Q. So at this point, did you feel that

1 Thread was okay with you selling your bag?

2 A. I was.

3 Q. Even though they -- apparently there were
4 some comments on social media?

5 A. Yes.

6 Q. And why did you think Thread was okay
7 with you selling your bag?

8 A. From us talking to the lawyers and I
9 thought we were done with all that. And so I
10 thought I could go on with my merry life.

11 Q. And those comments that you were getting
12 didn't change your opinion of that?

13 A. No, they didn't.

14 Q. Okay. I'm going to introduce a new
15 exhibit, Exhibit-24.

16 (Exhibit-24 marked.)

17 Q. (BY MS. FRANSEN) Kimberly, do you
18 recognize this?

19 A. I do.

20 Q. What is this?

21 A. This is a text message between Ethan and
22 I.

23 Q. Same as before where his texts are in
24 gray?

25 A. Yes.

1 Q. Your texts are in blue?

2 A. Yes.

3 Q. At the top, there's a text from you that
4 says "Two girls were eyeing me and my bag. Pretty
5 sure they were Thread people. Did not look nice."
6 Do you see that?

7 A. I do.

8 Q. Do you remember this incident?

9 A. I do.

10 Q. Do you remember when it happened?

11 A. I believe I was at the mall.

12 Q. What happened?

13 A. I was walking and these two girls
14 completely -- I don't know the word -- like, gave
15 me a really dirty look. And just looked me up and
16 down, looked at my bag. Specifically I remember
17 them specifically looking at my bag and looked me
18 up and down and just gave me the dirtiest look.

19 Q. Do you know why you thought they were
20 Thread people?

21 A. Because they had already -- if they had
22 already yelled at us in the airport for something,
23 I thought they could do the same exact thing and do
24 it another -- do -- do something else. I don't
25 think it really bothers them.

1 Q. Tell me about the airport. What
2 happened? And let me stop too and ask, first, when
3 did it happen?

4 A. I can't remember the exact year.

5 Q. Was it before the lawsuit was filed?

6 A. Yes.

7 MR. TODD: Can you clarify? Which
8 incident are you talking about?

9 THE WITNESS: The one at the -- at the --

10 MS. FRANSEN: She's about to tell me.
11 The airport.

12 MR. TODD: Okay. I just wanted to make
13 sure we were talking about the same thing. Okay.

14 THE WITNESS: The air -- sorry. Go
15 ahead.

16 Q. (BY MS. FRANSEN) Okay. So you think
17 that the airport incident was before the lawsuit
18 was filed?

19 A. I do -- I do believe so.

20 Q. Okay. Was it after you had redesigned
21 your bag?

22 A. Yes, it is.

23 Q. Okay. Tell me about it.

24 A. We got off the airplane. We were flying
25 from Utah to Arizona. I can't remember why we were

1 going to Arizona. We got off the airplane and we
2 were walking down to get to our bags. And there
3 was hundreds of people because we were at the
4 airport. We were -- Ethan and I were walking with
5 our crossbodies because it's our product, it's our
6 brand. We were walking down the hallway. And all
7 of a sudden, we hear behind us two people -- one
8 man yelling with a girl next to him saying, "Nice
9 Thread ripoff bags."

10 And so we turned around and we're like,
11 "What -- what the crap? What's going on?"

12 And they didn't say anything to us
13 anymore. And so then we went to get our bags and
14 we were walking outside. And my husband said -- my
15 husband was walking past them and said, "What
16 was -- what was that all about, dude? What's going
17 on?"

18 And he said, "I'm -- I'm one of the
19 owners of Thread. You guys ripped off our bags."
20 And said a bunch of other stuff. And that was what
21 I remember from the incident.

22 Q. Do you know who it was?

23 A. I don't.

24 Q. Did he say that he was an owner of
25 Thread?

1 A. He did.

2 Q. That was before or after the text in
3 Exhibit-24?

4 A. This was -- the airplane was first. This
5 was second.

6 Q. Okay.

7 A. So that's why I assumed anything could
8 happen at this point.

9 Q. Okay. Had you heard anything else from
10 Thread other than those two things?

11 A. No.

12 Q. So at that point, did you think that
13 Thread had a problem with you selling your bag?

14 A. After the airplane incident?

15 Q. After either one.

16 A. I didn't really think too much of it to
17 be completely honest with you. Especially this. I
18 didn't -- I mean, I wasn't for sure on this. I
19 just assumed. But the airplane, he told me he was
20 an owner of Thread.

21 Q. Okay. And then you sent a text that's
22 halfway through that says "So done with their
23 shit."

24 Ethan responds "I am so done with them."
25 When you were referring to "their shit,"

1 what are you talking about by that?

2 A. I'm done -- I think I was -- I don't
3 remember the dates of these. I think it was the
4 shit I was talking about was the airplane, was
5 being eyed. I was thinking the lawsuit. Just
6 everything.

7 Q. Okay. We want to -- what I'm trying to
8 get at here by looking at these --

9 A. Okay.

10 Q. -- is between the time that you
11 redesigned your bag and the time that you got the
12 updated cease and desist letter in October 2023 --

13 A. Okay.

14 Q. That whole time --

15 A. Yes.

16 Q. -- did you think Thread was okay with you
17 selling your bag?

18 A. I truly did.

19 Q. Okay. Even though you had a couple of
20 incidents that arose?

21 A. Yes.

22 Q. And you also got some messages from
23 people saying the bags look the same?

24 A. Yes.

25 Q. And Brixley had been tagged on Thread's

1 social media?

2 A. Yes.

3 Q. Okay.

4 A. I -- I can't -- I can't say that people
5 are going to comment or not comment. That's not up
6 to me. So it's just -- it's hard because I don't
7 have any say in what people say.

8 Q. I'm going to introduce another exhibit.
9 (Exhibit-25 marked.)

10 Q. (BY MS. FRANSEN) This is Exhibit-25.
11 Kimberly, have you seen this before?

12 A. I have.

13 Q. What is this?

14 A. This is a TikTok.

15 Q. How do you know that?

16 A. Because it -- I remember DMing -- not
17 DMing -- I remember commenting this.

18 Q. Let's talk about that. So do you know
19 what this TikTok says?

20 A. It says something about -- something
21 about her -- her crossbody being damaged or
22 something like that. Something like that. I can't
23 remember exactly what it was.

24 Q. Do you know who -- the name on there is
25 hanaxiaoke.

1 A. Yes.

2 Q. Do you know who she is?

3 A. I don't, no.

4 Q. Had you interacted with her before this?

5 A. No.

6 Q. How did you come across this post?

7 A. Someone tagged me in it.

8 Q. Is that -- is that at -- is that Mack
9 Wing at the bottom?

10 A. Yes.

11 Q. So did you see it when you were tagged?

12 A. I did.

13 Q. So you do see some tags?

14 A. On -- I'm more -- yeah. On TikTok at the
15 time I was. I was looking at my tags on TikTok.
16 Not on Instagram. Instagram is a beast. But
17 TikTok is a lot easier to go through.

18 Q. Do you remember being -- if Brixley was
19 tagged on any other TikToks that mentioned Thread?

20 A. Not that I'm aware of, no.

21 Q. And there's a comment here you referenced
22 that said "DM me. Let's get you a bag." Do you
23 see that?

24 A. I do.

25 Q. Did you write that comment?

1 A. I did.

2 Q. What does that comment mean? Well, let
3 me say, what's DM?

4 A. Direct message.

5 Q. Okay. Why did you leave that comment?

6 A. Because if that didn't work for her, I'll
7 send her a new bag.

8 Q. Were you suggesting that your bag would
9 be a replacement for a Thread bag?

10 A. I was suggesting that I would just send
11 her a new bag.

12 Q. Why would you volunteer to send her a new
13 bag when her original bag was from another company?

14 A. Because it was broken and I believe in my
15 product.

16 Q. But this wasn't your product, right?

17 A. Correct. It's not my product.

18 Q. Right. So if someone -- if someone
19 tagged you on, for example -- this is probably a
20 bad example, but Michael Kors.

21 A. Okay.

22 Q. And they said "@brixleybags" instead,
23 would they offer to give that person a Brixley bag?

24 A. I'm not exactly sure.

25 Q. It would just depend?

1 A. It would depend.

2 Q. Does it matter to you that it's the same
3 style of bag?

4 A. No.

5 Q. Just if someone tags you on a post where
6 someone's bag broke, you would offer to send them a
7 new bag?

8 A. Yeah. People will tag me in totes that
9 they've boughten and I'll send them a new tote. Or
10 influencers, I'll send them packing cubes. I'll
11 send crossbodies. So...

12 Q. Has someone ever tagged you on a tote
13 post and you've sent them a new tote?

14 A. I have.

15 Q. From what brands?

16 A. I don't know what brands they had, but I
17 sent them my -- my tote. Because I believe in my
18 tote and I believe it's better than any other tote
19 on the market.

20 Q. In Mack Wing's comment, he says "The OG
21 bag like this." Do you see that?

22 A. Yes, I do see that.

23 Q. Do you know what "OG" means in this
24 context?

25 A. I do not know what he's referring to.

1 Q. Have you ever used the word "OG" on
2 social media?

3 A. Possibly.

4 Q. Have you ever seen it used to mean
5 "original"?

6 A. I believe it means "original gangster."

7 Q. Okay. I'm going to introduce Exhibit-26.
8 (Exhibit-26 marked.)

9 Q. (BY MS. FRANDSEN) There was a few pages
10 in this, so I'll scroll through for you for just a
11 minute so you can see what this is.

12 A. Okay.

13 Q. Do you recognize what these are?

14 A. These are TikTok posts.

15 Q. Are they on your personal TikTok account
16 or on Brixley's?

17 A. This is personal.

18 Q. The first page, page 1, is that a picture
19 of the Brixley crossbody bag?

20 A. That is.

21 Q. Is that actually a video about the
22 crossbody bag?

23 A. That is a video.

24 Q. So we talked earlier about whether you
25 post about Brixley on your personal TikTok. You

1 mentioned that it was more of just an update for
2 family and friends; is that right?

3 A. That was on Instagram.

4 Q. On Instagram?

5 A. Yes.

6 Q. Okay. So on TikTok, do you actually post
7 about Brixley?

8 A. I used to.

9 Q. And you posted to actually promote
10 Brixley?

11 A. I did on TikTok, yes.

12 Q. You don't do that anymore?

13 A. I have once or twice within the last
14 year. But before that, it -- no. So can I go back
15 on that?

16 Q. Yes.

17 A. I used Kimberly to promote Brixley. And
18 then I stopped and now I do farm content, animal
19 content. And I promoted my crossbody a few months
20 ago through that platform again. But now it's
21 strictly Brixley. I try not to -- I've now grown
22 my brand for my farm and so I try to keep that farm
23 content. And then now I post on Brixley TikTok
24 only Brixley if that makes sense.

25 Q. Okay. How often would you say you still

1 post about Brixley on your personal TikTok?

2 A. Oh, my personal TikTok? Not very often
3 at all.

4 Q. Okay. Once a month?

5 A. No. Not even. Once every two, three
6 months.

7 Q. Okay.

8 A. It's -- you'll -- that's hard to say
9 because I'll do "day in the lives," but I'm at my
10 warehouse packaging orders, but it's not to promote
11 my brand. It's just showing what my life is, what
12 I do with my life, what I do with my day. And so
13 it's -- I don't necessarily think of it as
14 promoting it. It's just my life.

15 Q. It's incidental?

16 A. It -- it is.

17 Q. Okay. So I'm going to show you a couple
18 of these, but it sounds like these are all older
19 posts.

20 A. Yes.

21 Q. If they talk about Brixley?

22 A. Correct.

23 Q. Okay. And actually, I might not have too
24 many questions about these. On page 2, there is a
25 post. It says "January 23rd" up at the top.

1 A. Mm-hmm.

2 Q. Is that you in the video?

3 A. That is.

4 Q. And it says "One minute you have an idea.

5 The next minute you have built a company with 53

6 different crossbody styles." Do you see that?

7 A. I do.

8 Q. When you say "crossbody styles" there,
9 are you talking about the patterns or are you
10 talking about the design?

11 A. I'm talking about the -- the pattern. I
12 should have been more specific on that, so.

13 Q. Okay. Well, I mean, you didn't know that
14 I was going to ask you about it, right?

15 A. That's true. If I knew that, I probably
16 would have completely changed the thing and said
17 "colors." But...

18 Q. So when you mentioned an "idea" here,
19 what idea are you talking about?

20 A. My crossbody.

21 Q. The idea for the crossbody bag?

22 A. Correct.

23 Q. Okay.

24 A. Those are great angles of me.

25 Q. It's really hard to take screenshots of

1 videos.

2 A. I'm just joking with you.

3 Q. We picked the least flattering ones.

4 A. I'm just messing with you.

5 Q. Okay. So page 8, do you recognize this
6 video?

7 A. I do.

8 Q. Who is this in this video?

9 A. That's me.

10 Q. Where are you?

11 A. I am in a 10-by-10 room, an office
12 building. I'm sorry. An office building.

13 Q. So you rented space in an office
14 building?

15 A. I did.

16 Q. Were you packaging orders?

17 A. I was.

18 Q. You mentioned this earlier, but do you
19 still package orders for Brixley?

20 A. I do.

21 Q. For the crossbody bags?

22 A. I do. All my products.

23 Q. All your products?

24 A. I do.

25 Q. Okay. How often do you do that?

1 A. Let's see. I have a nanny Monday,
2 Wednesday, and Thursday. For sure those days. And
3 I try to come in the other days, but it's not
4 always likely. So at least -- at least three to
5 four times a week.

6 Q. Okay. Now we're on page 10. Again, this
7 is the Kimberly O'Connell --

8 A. That's a good one.

9 Q. You're welcome.

10 This is a Kimberly O'Connell account.
11 This is from May 5th, 2023.

12 A. Yeah.

13 Q. The caption says "All right. So I always
14 post about Brixley." Do you see that?

15 A. I do.

16 Q. So at that point, it sounds like that
17 statement may have been true; is that correct?

18 A. Yes.

19 Q. But it's not true anymore as far as your
20 personal TikTok account goes?

21 A. Sorry. What do you mean by that? I'm
22 sorry.

23 Q. So this says "I always post about
24 Brixley."

25 A. Yes.

1 Q. Would you say that you still always post
2 about Brixley?

3 A. On TikTok? No. Not on my personal page.

4 Q. Okay.

5 A. But I think this one, if I'm correct, I
6 said this, but then I go ahead and show my farm
7 animals.

8 Q. Oh, okay.

9 A. So I think that's what -- I can guarantee
10 that's what that was. I'm pretty sure I was six
11 months pregnant at this time. And that's why I
12 look very good. And I was showing my farm animals
13 because I was saying I post a lot about Brixley but
14 here's my farm.

15 Q. Okay. Last page. Again, if you look at
16 the date, this is from February 2023.

17 A. Yes.

18 Q. Do you know what this video is?

19 A. I do.

20 Q. What is it?

21 A. This is a model that my photographers had
22 come and shoot a video for showing the five
23 different ways to wear my bag.

24 Q. Was this an ad that you used to promote
25 your bag?

1 A. I -- I believe they tried to run it as an
2 ad. But my marketing team -- sorry -- my
3 photography team just sends me videos like this and
4 then it's up to me what I want to -- well, my
5 marketing team has -- has the files to all of it so
6 it's dependent on what they want to run as ads,
7 what they think would do best.

8 Q. Okay. I've introduced Exhibit-27.
9 (Exhibit-27 marked.)

10 Q. (BY MS. FRANSEN) Do you recognize this?

11 A. I do. These are text messages between
12 Ethan and I.

13 Q. I'll scroll down so you can --

14 A. I'm sorry.

15 Q. That's okay. I'll scroll down so you can
16 see the whole thing.

17 A. Yes. Okay.

18 Q. Are these screenshots from your phone or
19 from Ethan's phone?

20 A. These are from Ethan's phone.

21 Q. Okay. So did he send -- did Ethan send
22 the messages in blue?

23 A. Yes.

24 Q. Did you send the messages in gray?

25 A. I did.

1 Q. There's a message at the top that says
2 "I'll probably jump on the phone with Ethan and
3 explain the situation with Thread and it's Geoffrey
4 is involved with them or not." Do you see that?

5 A. I do.

6 Q. So is Ethan talking about a different
7 Ethan?

8 A. He is.

9 Q. Who is he talking about?

10 A. He's talking about -- if I recall
11 correctly, he was talking about we had thoughts of
12 selling our company a while back. And Ethan was a
13 guy who sells companies or talks to people about
14 possibly selling companies and the pros and cons of
15 it.

16 And so there was a guy involved named
17 Geoffrey. And I thought he possibly could be
18 involved with Thread Wallets. And so that's why he
19 was going to jump on the phone with Ethan, the
20 other guy, and ask him and make sure that he wasn't
21 involved before we sent over numbers, before we
22 sent over anything, because we didn't want them to
23 be involved at all.

24 Q. Do you remember when these texts were
25 sent?

1 A. I don't recall the exact dates, no. I
2 know it was -- if you go down -- my son is in it.
3 He was young. So it had to have been after October
4 2023.

5 Q. Okay. So this was after the October 2023
6 demand letter probably?

7 A. It was, yes.

8 Q. Okay. Did you end up explaining the
9 situation with Thread to Ethan or to Geoffrey?

10 A. I was not on that phone call, so I'm not
11 exactly sure what Ethan had said to the other
12 Ethan.

13 Q. Okay. So the -- your involvement was
14 limited to these texts?

15 A. It was very. I wasn't really involved in
16 that at all.

17 Q. Okay. That was all Ethan?

18 A. It was.

19 Q. Your Ethan?

20 A. Yes. Sorry. I'm -- Ethan O'Connell.
21 Not the other Ethan.

22 Q. Not foreign Ethan?

23 A. Not foreign Ethan.

24 Q. I'm going to introduce Exhibit-28.
25 (Exhibit-28 marked.)

1 Q. (BY MS. FRANDSEN) Let me make sure -- do
2 you recognize this?

3 A. I do.

4 Q. What is this?

5 A. This is Brittany Corbett. It is a friend
6 of my sister's.

7 Q. And did she send the texts in gray?

8 A. She did.

9 Q. And you sent the texts in blue?

10 A. I did.

11 Q. What are these texts about?

12 A. These are texts about her wanting to get
13 some crossbodies for a cheer team that she I think
14 runs. So I was asking how many she needed and what
15 the discount I could give her was.

16 Q. Did she tell you why she wanted to buy
17 from you instead of Thread?

18 A. I don't think she told me, but we're
19 family friends, so I think that's why she came to
20 me. Because I think in the text above, it was
21 saying how a couple of her colleagues or something
22 wanted to get Thread. But I know we're family
23 friends, so I think that's why she was thinking of
24 possibly using us.

25 Q. Did you have any phone conversations

1 about this outside of these text messages?

2 A. I did not, no.

3 Q. Do you -- did you understand from her
4 that she thought your bag would be interchangeable
5 with Thread's bag?

6 A. What do you mean by that?

7 Q. So it sounds here like she wants to get a
8 bag?

9 A. Yes.

10 Q. And she just wants to get the one that's
11 the cheapest.

12 A. Yes.

13 Q. Does that sound right?

14 A. Yeah. Sorry. Can I read it?

15 Q. Yeah. And I'll scroll if you want me to
16 scroll.

17 A. Okay. Okay. Would you mind going down?
18 Thank you. Okay. I'm ready.

19 Q. Okay. So did you -- did you have the
20 impression that she thought the bags were
21 interchangeable and she was just going to go with
22 whatever one was cheaper?

23 A. I didn't get that impression from that.
24 The impression I got is the other people wanted
25 Thread, but she wanted Brixley because we're family

1 friends.

2 Q. Okay.

3 A. That's the impression I got from that.

4 Q. Okay. Has that happened to you in any
5 other instances where someone came to you and said,
6 "Hey, Thread will give us this price for a
7 crossbody bag. Can you beat that?"

8 A. Never, no. This is the only one, yeah.

9 Q. This is the only time?

10 A. Yeah.

11 Q. Okay. I'm going to introduce Exhibit-29.
12 (Exhibit-29 marked.)

13 Q. (BY MS. FRANDSEN) Do you recognize this?

14 A. I do.

15 Q. What is this?

16 A. This is a text message from Ethan and I,
17 between Ethan and I.

18 Q. Are these screenshots from Ethan's phone
19 or from your phone?

20 A. These are screenshots from Ethan's phone.

21 Q. So he sent the texts in the gray?

22 A. Yes, he did.

23 Q. Do you remember getting these texts?

24 A. I do. Yes.

25 Q. Do you remember when these were sent?

1 A. I don't recall.

2 Q. Okay. There's a screenshot at the top
3 that says "Thread" on it. Do you see that?

4 A. I do.

5 Q. Do you know what that's from?

6 A. Those are -- that looks like it's from
7 their website.

8 Q. From Thread's website?

9 A. Yes.

10 Q. You testified earlier that you've never
11 been on Thread's website. Is that correct?

12 A. That is correct.

13 Q. Did Ethan tell you why he was on Thread's
14 website?

15 A. He did not tell me why he was on Thread's
16 website.

17 Q. Okay. There's another screenshot below
18 the "organizing pouches" text. It's cut between
19 two pages. It is blurry. It's blurry on my screen
20 and your screen. That's how we got it.

21 A. Okay.

22 Q. There is a comment that I can barely make
23 out that says "Featuring @brixleybags our Lord and
24 savior." And then the comment below says "It's a
25 @thread_wallets." I can flip my computer screen

1 around and show you if it's easier for you to see
2 on there.

3 A. I should be fine. But I can't read out
4 what it says unless you can see on your screen.

5 Q. Let me show you on mine.

6 MR. TODD: Trying to get it on mine too.

7 THE WITNESS: Oh, gosh. It's even better
8 up there.

9 MS. FRANSEN: The exhibit that we got is
10 blurry.

11 MR. TODD: Yeah. And I think that
12 that --

13 THE WITNESS: That's better up there than
14 it is on here.

15 Q. (BY MS. FRANSEN) Okay. Do you remember
16 getting this screenshot?

17 A. I do remember getting this screenshot,
18 but I don't remember what was the comments in
19 those.

20 Q. Okay. Do you remember when you got it?

21 A. I do -- well, I don't. But it would have
22 had to have been before -- or on May 7th or before
23 May 7th. But I don't know what year that was.

24 Q. If there's no year on the text --

25 A. Does that mean it's current?

1 Q. Does that make you think it's this year?

2 A. I have no idea. I don't know how Apple
3 works in that sense. Is that -- oh, I don't know
4 if you know.

5 Q. Well, I don't, except when we got texts
6 from you, I believe your counsel said that when you
7 took screenshots from this year --

8 A. It didn't have a date.

9 Q. The year tended to be not there.

10 A. Oh, okay.

11 Q. So it sounds like this is probably from
12 this year.

13 A. From this year? Okay.

14 Q. But if these are shots from Ethan, I can
15 ask him about that later.

16 A. Okay.

17 Q. So let's go to Exhibit-30.

18 (Exhibit-30 marked.)

19 THE WITNESS: Can I ask how many exhibits
20 you have?

21 Q. (BY MS. FRANSEN) Well, it depends on
22 how you answer.

23 A. Oh, okay. Sorry.

24 Q. Always. That's okay.

25 A. I didn't know how many there were.

1 Q. I might not use all of them. That's how
2 it always works.

3 A. Okay.

4 Q. Have you seen this document before?

5 A. Possibly. I can't recall.

6 Q. Okay. Do you see the Workman Nydegger
7 logo at the top?

8 A. I do.

9 Q. And the name David Johnson?

10 A. I do.

11 Q. And then there's an address to Scott
12 Hilton at Kunzler Bean & Adamson. Do you see that?

13 A. I do.

14 Q. So this looks like a letter that was sent
15 in October 5th, 2023, to Scott Hilton?

16 A. Yes.

17 Q. I can scroll down it. You can see
18 there's some texts here. It's saying Brixley was
19 formerly notified of Thread's pending design patent
20 application. That patent has now issued. Do you
21 see that?

22 A. I do.

23 Q. And then it says the bag is substantially
24 similar. Does that jog your memory at all?

25 A. It does, yes.

1 Q. Did you ever see this?

2 A. I do recall seeing this.

3 Q. As you scroll down, there's a paragraph
4 at the end of it. It says -- well, I'll read the
5 whole thing. "I understand that during previous
6 discussions regarding Brixley's crossbody bag,
7 Brixley agreed to some minor modifications of its
8 product but did not otherwise agree to stop selling
9 its bag. Since then, there has been considerable
10 consumer commentary about the similarities between
11 the designs, including the following comments on
12 Brixley's social media posts."

13 And there's some screenshots there.

14 A. Okay.

15 Q. We've talked about these already.

16 A. Yes.

17 Q. And then "Thread has also received many
18 messages and comments from consumers accusing
19 Thread of copying Brixley's product."

20 There are a few examples included. By no
21 means are they all of the messages.

22 Had you seen any of these comments before
23 you saw this letter?

24 A. I have not, no.

25 Q. What did you do once you -- well, let me

1 back up. Were you surprised to get this letter?

2 A. I was.

3 Q. Why is that?

4 A. Because like I had said before, I thought
5 we were -- I thought we were on good terms.

6 Q. Did you ever get an agreement with
7 Thread?

8 A. Not that I'm aware of, no. But I guess I
9 didn't know how it worked. I'm not a lawyer so I
10 didn't know how that works.

11 Q. Did Thread ever send you anything saying
12 "We're okay with your design. You're okay to keep
13 moving forward with it"?

14 A. Not that I had seen.

15 Q. I'm going to introduce another exhibit.
16 This is Exhibit-31.

17 (Exhibit-31 marked.)

18 Q. (BY MS. FRANSEN) Do you recognize this?

19 A. Yes, I do.

20 Q. What is this?

21 A. These are the texts between Ethan and I.

22 Q. Did you send the texts in the blue
23 bubbles?

24 A. Yes.

25 Q. And he sent the ones in the gray?

1 A. Yes.

2 Q. I can make them bigger if that's easier.

3 And Ethan says "Fuck Thread. I don't
4 want to put our life on hold because of them.
5 Let's build our house and we will start a slush
6 fund for the fees if it gets to that." Do you see
7 that.

8 A. I do.

9 Q. Do you know when he sent that?

10 A. I do not recall when he sent that, no.

11 Q. Was it before or after that October
12 letter was sent?

13 A. That was after the October letter was
14 sent.

15 Q. That was when you --

16 A. Actually, I think it was after the
17 October letter was sent. Sorry. I was trying to
18 jog my memory.

19 Q. That's okay. So at that point, were you
20 trying to decide what to do in response to that
21 letter?

22 A. No. I think we were just -- I think we
23 were just praying about what we should do for our
24 life, what we should do moving forward with our
25 life. We've moved a lot.

1 Q. So when you say what to do with your
2 life, what were you talking about?

3 A. I mean, I don't think you have ten hours,
4 but we've moved a bunch of times. We were thinking
5 about building. We were thinking about renting --
6 not renting. We were thinking about building on
7 different properties. We were thinking about
8 buying certain properties. So I think we just
9 weren't sure exactly what we wanted to do at that
10 moment.

11 But I think when we first got that
12 lawsuit, the second lawsuit, or the lawsuit from
13 Thread in 2023, I think we were kind of like what
14 do we do about it? And I think that's when -- I
15 think that's when he said "Eff Thread." I don't
16 want to put my life on hold because of them,
17 because we can't just sit and do nothing. We still
18 have to live our life. We still have to take care
19 of our kid and do what we want to do. And so I
20 think that's what that was about.

21 Q. Okay. So when you said "Maybe we
22 shouldn't be right now," what were you talking
23 about?

24 A. I'm going to read it really quick.

25 Q. Okay.

1 A. Oh, maybe build our house. Possibly.
2 That's possibly what I'm think -- saying. I think
3 that's what -- I said I'm not sure if we want to
4 build our house. We need to pray about it. I know
5 this was right after my kid was born.

6 And -- and I'll be honest with you, I
7 didn't want to build a house right after my kid was
8 born. The thought of building a house after having
9 a kid -- we were thinking about building the house
10 before the kid and I couldn't do it nine months
11 pregnant. Or in pregnancy. I was too sick. And
12 so I think him saying building a house, I think --
13 I still didn't want to do it because I had just had
14 a baby. And I know what building -- goes into
15 building. And so I think that's what I meant by
16 that.

17 Q. Were you worried at all about the
18 strength of your case against Thread at that point?

19 A. No. Not at all.

20 Q. Why is that?

21 A. Because I know I didn't copy them, so
22 I -- I -- but also you don't know where a case
23 goes, so I just think I didn't know.

24 Q. I'm going to introduce another exhibit.
25 This is Exhibit-32.

1 (Exhibit-32 marked.)

2 Q. (BY MS. FRANDSEN) Do you -- I can scroll
3 through this again. Do you recognize this?

4 A. No. Yeah. I know -- I know what this
5 is.

6 Q. Okay. Is this the Brixley Girlies
7 Facebook page?

8 A. This is.

9 Q. Or Facebook group?

10 A. This is.

11 Q. And this is a Thread on the Facebook
12 group?

13 A. This is.

14 Q. Do you recognize this post by Kelly
15 Carroll on March 30th?

16 A. I don't recall this. I'll be honest with
17 you. I -- I go on that Facebook group, but not
18 very often.

19 Q. Okay. So we'll look at it together. She
20 says "I hope not." And then there's a screenshot
21 here from qaiser_sheikh saying "@ponderbird,
22 wouldn't hold your breath. She's being sued by
23 Threads for patent infringement and basically
24 copying their bag." Do you see that?

25 A. I do.

1 Q. Does that jog your memory?

2 A. I do remember this, yes.

3 Q. Okay. Do you remember seeing the
4 original post somewhere? Or the original -- I
5 guess the original comments by ponderbird and
6 qaiser_sheikh?

7 A. I -- I don't remember the ponder one.
8 But I do remember the sued one.

9 Q. Okay. Do you remember what platform that
10 was on?

11 A. I want to say it was Instagram. But I
12 could be wrong. I want to say it was Instagram.

13 Q. Did you see that comment when it came in?

14 A. I don't know if I saw it right when it
15 came in, but I -- I saw it at some point.

16 Q. What did you do when you saw it?

17 A. I was kind of mad. Well, not mad, but I
18 was kind of like, "What the hell? How does anyone
19 even know about this? Like, I haven't told anyone.
20 Ethan hasn't told anyone except, I mean, our
21 family. So it would have had to be Thread people
22 who have told someone. And now it's leak --
23 leaked." Which makes me really upset, because I'm
24 telling you, if my -- second a lot of people find
25 out about it, my Brixley Girlies, they -- they're

1 very supportive of me. So...

2 Q. Do you know that the complaint in this
3 case is actually public record?

4 A. Oh, yes, I do. But I don't know who's
5 just looking that up. Like, who just looks up
6 "Brixley and Thread lawsuit"? Like, you don't just
7 look that up kind of thing.

8 Q. Yeah. Do you think anyone is just
9 googling "Thread bag versus Brixley bag" just to
10 compare the two?

11 A. Not that I'm aware of.

12 Q. Do you think that's possible?

13 A. It's possible, but I'm not sure.

14 Q. I want to go back to something. It's
15 going to take me just a second to find it.

16 Here it is. Okay. So I'm going to go
17 back to the Brixley Girlies page on Exhibit-32.
18 You've got the white screenshot with the pink
19 highlighting in the middle. Do you see that?

20 A. Yes, I do.

21 Q. Okay. If we go back to Exhibit-21, we
22 looked at a screenshot here that is blurry and you
23 weren't sure what it was.

24 A. Oh, okay.

25 Q. Does that jog your memory?

1 A. Oh, yes, it does. Thank you for that.

2 Q. Okay. So this screenshot --

3 A. Did you know about this before? Or no?

4 You're now just figuring this?

5 Q. This?

6 A. Yeah.

7 Q. Oh, I knew.

8 A. Oh, okay.

9 Q. This screenshot in Exhibit-21, is this
10 a screenshot -- the blurry screenshot --

11 A. Yes.

12 Q. This is a screenshot from the Brixley
13 Girlies page?

14 A. Yes. It looks like it.

15 Q. Okay. So Kaylee Moos Larsen says "Girl,
16 what the heck? Yours are so much better. Thread
17 just wants to be the only one making them and
18 doesn't want anyone else to have the same thing."
19 She's referring to the Thread crossbody bag?

20 A. She is.

21 Q. So do you think she's saying that Thread
22 has the same thing?

23 A. I'm not sure what she's saying about it,
24 but I just think she thinks -- I don't know what
25 she thinks actually. That they want to be the only

1 one making them.

2 Q. Okay. Let's go back and talk about the
3 Brixley Girlie group for just a second.

4 A. Okay.

5 Q. Who started this group?

6 A. I started it. I created it, but I have a
7 couple like moderators who moderate it for me. I
8 don't moderate it.

9 Q. What does it mean to moderate it?

10 A. Moderate it means like -- that's a really
11 good question, actually. I think moderating means,
12 like, going through, making people -- making sure
13 people are nice to each other. I know there's like
14 a Brixley resale page, and so people will post --
15 people post to resell their bag, like, on the main
16 page. My moderators will be like, "Hey, you can't
17 post it here. You have to go to, like, the Brixley
18 thread of the resale page." So they just, like,
19 monitor what's going on in the group.

20 Q. Okay. And who is it that moderates this
21 page?

22 A. Her name is Melanie. Melanie.

23 Q. Is that Melanie Sutton?

24 (Reporter request for clarification.)

25 THE WITNESS: I would have to check on

1 that.

2 Q. (BY MS. FRANSEN) Okay. Is she -- is
3 Melanie a Brixley employee?

4 A. No. She just wanted to do it for fun.
5 She said she monitors other accounts and she wanted
6 to do it for fun. And she knew I didn't have the
7 time or energy to do it.

8 Q. Do you know her outside of social media?

9 A. I don't.

10 Q. She just reached out to you on social
11 media?

12 A. Yeah, she did.

13 Q. That's very funny.

14 A. I know. It's -- it actually really is,
15 though.

16 Q. What was the purpose of this group?

17 A. The purpose of this group was to have a
18 community who could share their photos, who could
19 share -- there's a lot of times where I can't get
20 to all my DMs, to all my questions. There's a lot
21 of questions being asked, thousands. So it's a
22 place for people to kind of answer each other's
23 questions in a way, but then also show off their
24 bags, kind of have a community to -- I don't know.
25 It's just like a loving community who posts a bag,

1 and you say, "Oh, you look so pretty or gorgeous.
2 I love that bag on you."

3 Or people ask questions about the bags.
4 People will, you know, say, "Oh, should I get that
5 bag?"

6 And then everyone's kind of, "Oh, yeah,
7 you should."

8 It's just a loving community throughout
9 Brixley for Brixley.

10 Q. Did you have anything similar to this
11 before you started this page?

12 A. No.

13 Q. Whose idea was it to start this page?

14 A. It was actually -- did I say Melanie?
15 Was it Melissa? Melanie? Because I think her
16 name's Melanie.

17 Q. You said Melanie.

18 A. Okay. Good. Melanie, yes. It was
19 Melanie's idea. She DM'd me once and said, "You
20 should start a Facebook group because you get a lot
21 of DMs and comments and you can't answer all of
22 them. It would be nice if they can kind of answer
23 each other's."

24 And I said, "That's a great idea." So I
25 started the page.

1 And I think I posted about it once on my
2 Instagram story and linked it, and I said, "If
3 anyone wants to join, you're more than welcome to
4 join. Anyone's welcome."

5 And so that's how it got created. "If
6 you'd like to join, you're more than welcome to."

7 Q. Actually, your counsel told us that we
8 can join so we can get these screenshots. So...

9 A. Good. I'm glad you're part of it.

10 Q. How often do you look at the posts on
11 this group?

12 A. Oh, gosh. Once every few weeks.

13 Q. Do you ever respond to the posts on this
14 group?

15 A. There are some that I do respond to.

16 Q. How often do you respond?

17 A. Not very often. I -- there's not --
18 there's no consistency in it, so I couldn't give
19 you a consistent answer for that.

20 Q. Looking back at this thread specifically,
21 when did you first see this thread?

22 A. I believe I saw it the day it was posted
23 on here.

24 Q. Did someone tell you about it?

25 A. I believe my employee told me about it.

1 Either Sydra or Maddy because they're both in the
2 Facebook Girlyies group.

3 Q. What did they say to you?

4 A. They said, "Did you see this?"

5 Q. Did they say anything else about it?

6 A. No, they didn't.

7 Q. You scroll down and there's a lot of
8 different comments. You can see someone posted the
9 complaint on here.

10 A. Mm-hmm.

11 Q. Go to the bottom. There's a -- not the
12 bottom, but the middle of page 2, there's a comment
13 by Brixley Bags. Do you see that?

14 A. I do.

15 Q. It says -- well, let me stop. Who wrote
16 this comment?

17 A. That was me.

18 Q. Did you post it as well?

19 A. I did.

20 Q. Did anyone help you come up with it?

21 A. No.

22 Q. You say "Hi, loves. We have our U.S.
23 design patent on our crossbody. I'm not going
24 anywhere." Do you see that?

25 A. I do.

1 Q. What do you mean when you say you're not
2 going anywhere?

3 A. I'm not going to be -- like I'm -- like I
4 know they're suing us, but I'm not going to go
5 anywhere. I'm still here. Because I think people
6 were worried that I was -- like my company was
7 going to go down or something like that.

8 Q. So this is again a comment from the
9 Brixley Bags account, right?

10 A. Yes, it was.

11 Q. But you don't say "Brixley isn't going
12 anywhere." You say "I'm not going anywhere." Why
13 is that?

14 A. Because I'm Brixley.

15 Q. So you think your consumers think -- or
16 your customers think of you as Brixley?

17 A. Yes.

18 Q. We go down on that same page, there's a
19 comment by Tracy Crapis Burgess that says "Why
20 would she be sued if they are copying her bag?" Do
21 you see that?

22 A. I do.

23 Q. And then below, they say "They're saying
24 she copied their bag. They launched first." Do
25 you see that?

1 A. I do.

2 Q. Do you know why someone would think that
3 Thread copied your bag?

4 A. I don't.

5 Q. If we go to the bottom of page 3, there's
6 a comment by Melanie Sutton.

7 A. Oh, then yes. You were correct about
8 Sutton.

9 Q. Okay. She's your moderator?

10 A. Yes, she is.

11 Q. Okay. She says "While we love and
12 respect the discourse going on here, this post has
13 been reported so many times. I'm going to keep it
14 up for the information for others, but comments
15 will be locked now." Do you see that?

16 A. I do.

17 Q. Do you -- did you talk to her about
18 locking the comments?

19 A. I did not, no.

20 Q. So she did that without talking to you?

21 A. She -- yeah, she did. The thing is
22 she -- like I said, she's a moderator. And so
23 anything that's said like this, I mean, she
24 supports Brixley 100,000 percent. And so I think
25 she saw this and thought that was enough. It

1 doesn't need to go any further.

2 Q. Do you know if this thread is still
3 visible in the Brixley Girlies group?

4 A. It should be, yes.

5 Q. And so if I told you that I looked for it
6 and I can't find it, how would you respond to that?

7 A. That would -- Melanie probably hid it or
8 put it somewhere because I have not touched it.

9 Q. Okay. And she did that without talking
10 to you?

11 A. Correct.

12 Q. How do you communicate with Melanie?

13 A. Through DM, direct message.

14 Q. Do you have any messages with her talking
15 about the Thread lawsuit?

16 A. Not that I'm aware of, no.

17 Q. Okay. So she didn't message you about
18 this Thread?

19 A. No, she didn't. Not that I recall.

20 Q. Is that something that you can check on?

21 A. Yes. I can check on that later.

22 Q. Okay.

23 A. Will you let me know of that so I can --
24 MR. TODD: I have a note.

25 THE WITNESS: Okay. Or I will forget.

1 Q. (BY MS. FRANSEN) We're going to
2 introduce Exhibit-33.

3 A. Mm-hmm.
4 (Exhibit-33 marked.)

5 Q. (BY MS. FRANSEN) I'll scroll through
6 this again, but do you know what this is?

7 A. These are text messages between Connor,
8 me, and Ethan.

9 Q. Who is Connor?

10 A. Connor is our marketing guy.

11 Q. From REP Labs?

12 A. Yes.

13 Q. On page Brixley 2143, there are some
14 texts in blue. Are those texts from you?

15 A. It is -- now I'm not sure if -- I think
16 so.

17 Q. Could they have been from Ethan?

18 A. Yes, but now I don't know if it's me or
19 Ethan.

20 Q. If you look at the top, there's two
21 bubbles --

22 A. Oh, it says "Share your name," so that
23 would be me.

24 Q. Okay. So there's some texts from
25 February 20th. You say "We didn't want to say it

1 while you're on the phone, but just so you're
2 aware, Thread Wallets is suing us. We're in a
3 lawsuit right now." Skip the next one. "We did
4 just get our design patent allowance approved but
5 we are still in a lawsuit. Our lawyer says they
6 don't have a case but they are still being
7 difficult." Do you see that?

8 A. I do.

9 Q. Going back to the first text, why did you
10 not want to tell them about the lawsuit on the
11 phone?

12 A. I can't remember why. I think we didn't
13 know who was in the room at the time. And like I
14 said before, we don't like to tell anyone about the
15 lawsuit. So we weren't sure who was in the room or
16 if he was on speaker.

17 Q. In your text there, you say "Our lawyer
18 says they don't have a case, but they are still
19 being difficult." Do you think that Thread doesn't
20 have a case?

21 A. I do think they do not have a case.

22 Q. If they didn't have a case, do you think
23 they would have filed a lawsuit?

24 A. I'm not sure. That's up to Thread.

25 Q. After seeing some, a very small sampling

1 of some of the social media comments, do you still
2 think that Thread does not have a case?

3 A. I do not think they has a case, no.

4 Q. Despite the social media comments?

5 A. Correct.

6 Q. If you got hit with -- let's go lower
7 end -- 150 comments from people saying that you
8 copied someone else when your bag came first, would
9 that bother you?

10 A. Possibly, yes.

11 Q. Would you want to be able to do something
12 about it?

13 A. I probably wouldn't do anything about it,
14 no.

15 Q. What if it was hurting your business?

16 A. I'm not sure. I'm not in that position.

17 Q. Let's go to the next page. It's Brixley
18 2144. The top bubble says "To be 100 percent
19 honest, I don't think I feel comfortable with
20 someone who's worked for them do our e-mails. If
21 that was the case and you hired her on, I think we
22 would try to find someone else to do our e-mails."
23 Do you see that?

24 A. I do.

25 Q. Why were you worried about someone who

1 worked for Thread working on your e-mails?

2 A. At this point, I didn't want Thread's
3 name in my house. We don't talk about Thread.
4 It's a swear word in our house. So having someone
5 connected to them at all, I didn't want to be part
6 of my team.

7 Q. Next thing -- the next text on here is
8 from Connor. He says "Good to hear about the
9 design patent. Chris thinks maybe we can start
10 knocking off the Amazon copycats, so connect with
11 him about that." Do you know what he's talking
12 about?

13 A. I do. Yes.

14 Q. What's he talking about?

15 A. Chris is our Amazon guy who wanted to
16 knock off -- like kick off -- not knock off, but
17 kick off the Amazon copies that we had been talking
18 about earlier.

19 Q. Okay. Have you started that process yet?

20 A. I think they tried a couple of them
21 because they were -- the name was under our
22 listing. And so when they purchased under our
23 listing, it was, like, sending, like, a knockoff
24 bag or something like that. That's what I'm aware
25 of.

1 Q. Are you aware of anyone filing complaints
2 with Amazon based on your design patent?

3 A. What do you mean? Sorry.

4 Q. So if somebody -- I actually talked about
5 this with Connor, but you weren't there. So you
6 don't know about the conversation. If somebody
7 offers a bag that looks similar to your design
8 patent, Connor says he wants to report that to
9 Amazon and get it kicked off. Has he talked to you
10 about that?

11 A. We had talked to Chris about that, yes.

12 Q. Had you started doing that yet?

13 A. I think Chris had started the process.
14 I'm not sure where he was at in that process. To
15 be honest with you, I don't talk to Chris a ton
16 because Amazon is not my main source of income, so
17 I don't care as much about that.

18 Q. Did you tell them that they could start
19 reporting to Amazon?

20 A. I did.

21 Q. Why did you want to report the copycat
22 bags?

23 A. Because they were selling under my name
24 and selling them for cheaper, and I didn't want
25 people to get like a crappy bag that wasn't mine if

1 they thought they were buying my bag.

2 Q. Right. But did you also want to report
3 the bags that were copies of yours but not using
4 your name?

5 A. Yes, I believe so.

6 Q. Why did you want to report those as well?

7 A. Because I didn't -- I don't know. I
8 didn't -- I just didn't want them on Amazon.

9 Q. Why don't you want them on Amazon?

10 A. Because there's like a bunch of them on
11 there, and I wanted my crossbody to be, like, at
12 the top of the list because it wasn't the cheapest
13 at the time. These other people were knocking it
14 off and making it \$20 cheaper.

15 Q. So did you want to keep anyone else from
16 selling a bag that looks like yours?

17 A. Yeah.

18 Q. Do you think that strategy applies in
19 general? Not just on Amazon?

20 A. No. I think we were just doing it on
21 Amazon.

22 Q. Have you looked at any other bags you
23 think are similar to yours?

24 A. On Amazon?

25 Q. Anywhere.

1 A. There are people who have similar bags to
2 mine, yes.

3 Q. Have you looked at shutting them down
4 based on your design patent?

5 A. No.

6 Q. Why is that?

7 A. Because it's not worth my time.

8 Q. Why is it not worth your time?

9 A. Because I'd like to stay in my own lane.

10 Q. What does that mean?

11 A. I don't know how to further explain that.
12 I -- I have enough going on. I don't need to --
13 why -- why sue someone if I don't want to? I don't
14 want to.

15 Q. So you just don't want to?

16 A. I don't want to, no. I don't have the
17 time. I don't have the -- I have a lot of -- a lot
18 of better things to do with my life.

19 Q. Give me just a second. I'm going to
20 renumber a couple of these exhibits.

21 A. Okay.

22 MS. FRANSEN: Bud, what time is it?

23 MR. TODD: It is 4:34.

24 And you said you want to break at like a
25 quarter till or 10 till to get validations?

1 MS. FRANDSEN: Yes. That's right. But I
2 want to get through one thing quickly if I can.

3 Q. (BY MS. FRANDSEN) All right. I've just
4 introduced Exhibit-34.

5 (Exhibit-34 marked.)

6 Q. (BY MS. FRANDSEN) Do you recognize this?

7 A. I do.

8 Q. What is this?

9 A. This is the "About Us" page on the
10 website. I'm sorry.

11 Q. Do you know what the Wayback Machine is?

12 A. I don't know what the Wayback Machine is.

13 Q. So do you recognize this description
14 on -- under "About Us"?

15 A. I do believe I remember that description.

16 Q. Is this your current description?

17 A. I -- no. It's not my current
18 description.

19 Q. It's an old one?

20 A. It is. What is a backtrack? What did
21 you say? Time machine?

22 Q. Wayback Machine.

23 A. Oh. What is a Wayback Machine?

24 Q. There is a website where you can go to
25 where you type in a website and it will show you

1 old iterations of the website. It doesn't have
2 everything.

3 A. Yeah.

4 Q. It has some things. If you look along
5 the top bar, you can see the screenshot was taken
6 on May 24th, 2024. But below that, you can see a
7 date November 29th, 2021. That's the date that the
8 Wayback Machine archived this.

9 A. Okay.

10 Q. Does that sound accurate looking at this
11 description?

12 A. It must be if that's what it's saying. I
13 don't recall when I put that on or when I changed
14 it.

15 Q. Okay.

16 A. I don't update that very often.

17 Q. This first sentence says "Hi. My name is
18 Kimberly and my husband's name is Ethan. We are
19 the faces behind Brixley." Do you see that?

20 A. Yes, I do. Sorry. Yes.

21 Q. You testified earlier that you started
22 Brixley by yourself; is that right?

23 A. Yes.

24 Q. Let me back up actually. Did you write
25 this description?

1 A. I did.

2 Q. So if you started it by yourself, why do
3 you say that Ethan is one of the faces behind
4 Brixley?

5 A. He's one of the faces behind Brixley
6 because he is in most of my videos. He's around
7 the warehouse. He's in my posts. So he's part of
8 the face behind Brixley.

9 Q. Okay. But he's not a part owner?

10 A. No.

11 Q. The next sentence says "Brixley came to
12 me one night while I was scrolling on Amazon
13 looking for cute, high-quality packing cubes and
14 could not find a dang thing." Do you see that?

15 A. I do.

16 Q. Is that accurate?

17 A. It is.

18 Q. Can you tell me about that night?

19 A. Yes, I do. I was on Amazon scrolling
20 through Amazon and I wanted a high-quality packing
21 but there wasn't nothing to do it. And none of
22 them were cute. They were all ugly. And they were
23 made of, like, this -- like, this ripstop material
24 and I wanted something --

25 (Reporter request for clarification.)

1 THE WITNESS: It's like a parachute
2 material. And so I wanted to create a product that
3 was high quality and really cute. So I did it.

4 Also, I don't have -- I don't think I
5 have it on there, but I wanted to create a product
6 that made sense. Everything out there that I had
7 seen, it didn't -- the way their packing were
8 didn't make sense. So that's why I did the
9 variations that I have.

10 Q. (BY MS. FRANSEN) That night, you were
11 specifically looking for packing cubes?

12 A. Yes. High-quality packing cubes and
13 there wasn't anything.

14 Q. Okay. And that was when you decided you
15 wanted to start Brixley?

16 A. Yes. I guess so, yes.

17 Q. I'm going to introduce another exhibit,
18 Exhibit-35.

19 (Exhibit-35 marked.)

20 Q. (BY MS. FRANSEN) Do you --

21 A. Do you mind scrolling in? Thank you.

22 Q. Do you recognize this?

23 A. I do.

24 Q. What is this?

25 A. This is another about us page.

1 Q. Is this from your Brixley website?

2 A. This is.

3 Q. Did you write this one as well?

4 A. I did.

5 Q. It says -- this one says "Hi. My name is
6 Kimberly and I am the face behind Brixley." Do you
7 see that?

8 A. I do.

9 Q. So if you remember, the other one said
10 that you and Ethan are the face behind Brixley.
11 And now it just says you. Do you remember why you
12 made that change?

13 A. No. I don't think it's that deep. I
14 really don't. I think I was just literally writing
15 it one night. I don't think there was much thought
16 behind this. So there's really no reason to why I
17 didn't have Ethan's name in that.

18 Q. Okay. Ethan still is one of the faces
19 behind Brixley?

20 A. He is, yes.

21 Q. He just got kicked off the website?

22 A. He's just kicked off, I guess.

23 Q. Okay.

24 THE WITNESS: Sorry, babe.

25 Q. (BY MS. FRANDSEN) Do you think that your

1 followers think that Ethan is an owner of Brixley?

2 Or do you think they just associate it with you?

3 MR. TODD: Objection. Calls for
4 speculation.

5 THE WITNESS: I'm not sure what people
6 think, to be honest with you.

7 Q. (BY MS. FRANDSEN) When you are posting
8 about Brixley on your social media, do you try to
9 make it sound like Ethan is a co-owner or just you?

10 A. That is such a hard question to ask
11 because I don't show him in any certain light. I
12 just show him moving boxes and packaging, so I
13 really don't know what people think he is. I know
14 they think he's my husband, but I know they -- I
15 know that people know I'm the CEO. So I don't know
16 what they think he is.

17 Q. Okay. Next sentence says "Brixley came
18 to me one night while I was scrolling on Amazon
19 looking for cute, high-quality packing cubes and
20 crossbodies and could not find a dang thing." Do
21 you see that?

22 A. I do.

23 Q. Do you know why you added "and
24 crossbodies" to that sentence?

25 A. I'm not sure why I added -- at this

1 point, I know I updated it is because I was selling
2 crossbodies at the time. Again, I think you're
3 thinking too deep into it to why you're going to --
4 like saying crossbodies on Amazon kind of thing. I
5 just know I put packing cubes and crossbodies
6 because at the time before, I was just selling
7 packing cubes. At this point, I was now selling
8 crossbodies.

9 Q. Okay. But that night you were scrolling
10 Amazon, were you also looking for crossbodies?

11 A. Not that I recall.

12 Q. Okay. Why is it in this description?

13 A. That's a great question. Like I said, I
14 really -- it's not that deep. I think I was just
15 typing it and added "crossbodies" because that's
16 what I was selling at the time. But I really don't
17 think it's that deep.

18 Q. Okay. You say that this sentence up here
19 is inaccurate?

20 A. I would. I do. I do think it's
21 inaccurate.

22 MS. FRANDSEN: Okay. Let's go ahead and
23 break and go off the record.

24 (Off the record from 4:41 p.m. to
25 4:58 p.m.)

1 Q. (BY MS. FRANDSEN) Kimberly, do you
2 understand that you are still testifying under
3 oath?

4 A. Yes.

5 Q. I am going to share a new exhibit. This
6 is Exhibit-36.

7 (Exhibit-36 marked.)

8 Q. (BY MS. FRANDSEN) Do you recognize this?

9 A. I do.

10 Q. What is this?

11 A. This is a crossbody sling that I never --
12 the design I never published.

13 Q. Oh, you never published it?

14 A. I never did.

15 Q. Okay. Do you know when this was posted?

16 A. Oh, gosh. I don't. I know they're still
17 running an ad for it even though I never posted it.

18 Q. Is this a bag that you sampled?

19 A. Yes.

20 Q. Did you create the pattern?

21 A. I did. No. No. No. I didn't create
22 the pattern. The Ashley Frost did.

23 Q. Ashley Frost did?

24 A. Yes.

25 Q. Okay. Do you know where she got the

1 pattern?

2 A. I sent her a baby clothing item in Cotton
3 On Baby that was pink flowers with yellow dots.
4 And I really liked the design. And so I wanted her
5 to do it, but I didn't want it pink. I wanted it
6 blue because I thought pink was too girly. I mean,
7 yeah, too girly. And I think I already had a pink
8 bag come out, and so I wanted to do blue.

9 Q. Give me just a second. I'm going to
10 renumber.

11 While we wait for the screen to turn
12 on -- there it goes -- I'll say I just introduced
13 Exhibit-37.

14 (Exhibit-37 marked.)

15 Q. (BY MS. FRANDSEN) Kimberly, do you
16 recognize this?

17 A. I believe it's the U.S. design patent.

18 Q. Whose patent is this?

19 A. It looks like it is Brixley Bags.

20 Q. And you're listed as the inventor on this
21 patent?

22 A. I am.

23 Q. Are you listed as the sole inventor?

24 A. Yes.

25 Q. Do you still maintain you are the sole

1 designer of the design that is included in the
2 design patent?

3 A. I am. I do. I -- yes.

4 Q. Are you familiar with the duty of candor?

5 A. No.

6 Q. So if you look on the face of this
7 patent, you can see the section that says
8 "References Cited." And then there are some
9 patents listed under there, and then it says "Other
10 Publications." Do you see that?

11 A. I do see that, yes.

12 Q. There is a listing there for "Brixley
13 Bags available at Facebook.com, posted November
14 5th, 2020." Do you see that?

15 A. I do.

16 Q. Do you know why that's listed here on the
17 face of your patent?

18 A. I don't.

19 Q. This then says "Continued." If you go to
20 the next page, there's a page 2. It says
21 "References Cited." And it says, again, "Other
22 Publications." There's another link to a Brixley
23 Bags Desert Crossbody Sling. And then below that,
24 it says "Black Crossbody Bag, available at
25 Threadwallets.com." Do you see that?

1 A. I do.

2 Q. Do you know why that's listed on this
3 patent?

4 A. I don't. I don't know patents very well.

5 Q. I know. And I -- I don't want to ask you
6 about things that you don't know.

7 A. Yeah.

8 Q. Right? So are you aware that when you
9 file a patent application, you have an ethical
10 obligation to tell the patent office if you are
11 aware of anything that was available before your
12 patent application date that might be relevant to
13 whether your patent is patentable?

14 A. Oh, gosh. That was a lot. I don't -- I
15 didn't --

16 Q. Okay. Let me break it up.

17 A. I didn't -- sorry.

18 Q. Okay. So did you -- were you involved in
19 filing this design patent?

20 A. Ethan was in charge of -- of filing the
21 design patent.

22 Q. Okay. Did he handle the whole thing?

23 A. He did handle the whole thing.

24 Q. Okay. Did he do all the communications
25 with your lawyer?

1 A. He did.

2 Q. Did Ethan ever come to you and say, "Hey,
3 do you know of any crossbody bags that were
4 available before our bag?"

5 A. I don't recall that.

6 Q. Okay. If you look on here, under the --
7 again, under the "Other Publications" section,
8 under the Thread Wallets list, it says "Never Stop
9 Crossbody Bag, available at Thenorthface.com." Do
10 you see that?

11 A. I do.

12 Q. Were you available -- sorry. Were you
13 familiar with that bag before today?

14 A. Oh, I'm not sure.

15 Q. Okay.

16 A. I don't recall.

17 Q. Okay. Next one listed here is -- I'm not
18 sure -- "Dakine XBody bag, available at
19 Adventuresportsusa.com." Have you seen that
20 before?

21 A. I don't recall.

22 Q. Do you believe that your patent is valid?

23 A. I do.

24 Q. Are you aware that you have alleged in
25 this lawsuit that Thread's patents are invalid?

1 A. I believe so, yes.

2 Q. Do you have a reason for why -- if your
3 patent is valid, why is Thread's patents -- why are
4 Thread's patents invalid?

5 A. I'm not sure.

6 Q. If at the end of the day there's a jury
7 that finds that your bag infringes Thread's patent,
8 do you think that means your patent is invalid?

9 A. I'm not sure.

10 Q. Okay. Give me one minute. I'm going to
11 just renumber. I'm skipping exhibits, so that
12 should make you feel better.

13 A. Bedtime.

14 Q. Exactly.

15 Okay. I'm going to share this with you.
16 We're going to introduce Exhibit-38.

17 (Exhibit-38 marked.)

18 Q. (BY MS. FRANSEN) And make it bigger.
19 Kimberly, do you recognize this?

20 A. I do.

21 Q. What is this?

22 A. This is the crossbody sales from August
23 15th 2023 to present.

24 (Discussion off the record.)

25 MR. TODD: Let's go on attorneys' eyes

1 only.

2 (AEO begins.)

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(AEO ends.)

Q. (BY MS. FRANSEN) I'm going to introduce
Exhibit-39.

(Exhibit-39 marked.)

Q. (BY MS. FRANSEN) This is just one page.
Do you recognize this document?

1 A. Yes.

2 Q. What is this?

3 A. These are Brixley straps.

4 Q. Do you know the dates when these straps
5 were sold?

6 A. I do not know the dates.

7 Q. Does this look like a true and accurate
8 copy?

9 A. Yes. I just don't know the dates.

10 Q. Okay. One more. This is Exhibit-40.
11 (Exhibit-40 marked.)

12 Q. (BY MS. FRANSEN) This is a long one.
13 There's a spreadsheet. So I think what I'm going
14 to have you do again -- this is why I prefer just
15 the spreadsheet instead of the PDF. But if you
16 could just look through that --

17 A. Who made this spreadsheet? Did I -- did
18 we send this over or?

19 Q. You guys sent this over.

20 A. Okay. Oh, this was the -- this is --
21 this is our -- what's it called? From marketing.
22 From the marketing team.

23 Q. Okay. So the marketing team sent this
24 over to you?

25 A. Yes. Well, it just says "Updated." We

1 have a shared file.

2 Q. Okay. So they created it?

3 A. Yes.

4 Q. Can you do the same thing you did last
5 time? Just scroll through. I think the last --
6 something like 90 pages are just lines. But -- so
7 look through the ones with content. Let me know if
8 that looks true and accurate.

9 A. Yes.

10 Q. I want to go back to a topic we talked
11 about at the beginning and then we'll be done.

12 A. Okay.

13 Q. On my side.

14 Again, talking about how you designed
15 this crossbody bag.

16 A. Yes.

17 Q. What is all the evidence that you're
18 aware of sitting right here today that you designed
19 the crossbody bag?

20 A. What do you mean by that? I'm sorry.

21 Q. What can you point to besides your own
22 testimony that shows that you designed your
23 crossbody bag yourself?

24 A. I still -- can you say it in another --

25 Q. Yeah. Do you have any records that show

1 that you designed your crossbody bag?

2 A. Just the -- just phone calls, the paper
3 writings, the cardboard cutouts, and then me
4 designing it.

5 Q. And the paper writings and the cardboard
6 cutouts, are those all with your manufacturer?

7 A. The cardboard cutouts are. I don't know
8 where the paper copies are.

9 Q. Did they ever get sent back to you?

10 A. No.

11 Q. What evidence do you have that shows when
12 you designed your crossbody bag?

13 A. I don't know. I'm not sure.

14 Q. Okay. So you're not aware of anything
15 you can point to and show me right now today that
16 says, "Look, this shows I was working on my
17 crossbody bag on X date"?

18 A. Well, the messages with my manufacturer
19 had dates, but I don't know those exact dates.

20 Q. Okay. And I showed you the messages that
21 I found.

22 A. Yeah.

23 Q. And those messages were all dated -- I
24 think the earliest I found was August 19th. And
25 you weren't sure whether it was a crossbody bag or

1 not. But that's the earliest one that I found, was
2 August 19th, 2020.

3 A. Okay.

4 Q. Are you aware of any messages that you
5 sent prior to that to your manufacturer?

6 A. I'm not aware of any.

7 MS. FRANDSEN: Okay. I think I'm done.
8 So let's go off the record for a minute.

9 (Off the record from 5:15 p.m. to
10 5:17 p.m.)

11 MS. FRANDSEN: So just so we're all
12 clear, you're going to do your cross, and then
13 we're going to hold the deposition open so that we
14 can review the manufacturer messages with images
15 and possibly spend, you know, another hour, hour
16 and a half deposing Kimberly on those specifically.
17 Is that right?

18 MR. TODD: Yeah. I -- I believe so. I'm
19 not sure exactly how much time we have left, but
20 yes.

21 MS. FRANDSEN: Okay. Great.

22 MR. TODD: Okay. Great.

23 EXAMINATION

24 BY MR. TODD:

25 Q. Okay, Kimberly. I just have a couple

1 questions for you that I wanted to, you know, maybe
2 clarify some points on.

3 A. Okay.

4 Q. So we talked today. You and Brittany
5 talked about social media posts?

6 A. Yes.

7 Q. You -- you said that you've posted on
8 Instagram, TikTok, and Facebook for Brixley; is
9 that correct?

10 A. That is correct.

11 Q. Are there any other platforms that you've
12 posted content on?

13 A. No.

14 Q. Okay. Now, for -- for each of those
15 three platforms, is there -- is there both a -- you
16 have a personal and there is a Brixley account; is
17 that correct?

18 A. That is correct.

19 Q. Okay. Aside from -- you testified that
20 on TikTok, on your personal TikTok account, you did
21 post Brixley content; is that correct?

22 A. That is correct.

23 Q. Aside from TikTok, did you post -- did
24 you ever post any Brixley content on your personal
25 Facebook or personal Instagram?

1 A. Not that I can recall specifically.

2 Q. Okay. Okay. I want to look back at
3 Exhibit-3 here.

4 Okay. So if -- if you recall, Exhibit-3,
5 we looked at the current listings on Brixley's
6 website.

7 A. Yes.

8 Q. Okay. And we talked about the ability
9 to -- to use -- convert the crossbody bag into a
10 backpack. Do you recall that?

11 A. I do recall that.

12 Q. Now, we -- you said earlier that there
13 was no image of anyone using the crossbody bag as a
14 backpack; is that correct?

15 A. I just hadn't posted it on here.

16 Q. Is there -- do you see any -- any image
17 on this screen of the crossbody bag being
18 configured as a backpack?

19 A. Not on someone, no.

20 (Reporter request clarification.)

21 Q. (BY MR. TODD) Not necessarily on
22 somebody, but just -- is there -- does this show
23 the bag being configured into the backpack at all?

24 A. No. This doesn't have the configure --
25 like, you can see that it could be configured into

1 a backpack.

2 Q. Okay.

3 A. But there's no one wearing it as a
4 backpack in these photos.

5 Q. Okay. Thank you. And then let's go --
6 okay. I wanted to look at --

7 MS. FRANDSEN: That or you can just go
8 back to the finder.

9 Q. (BY MR. TODD) All right. I want to look
10 back at Exhibit-21. And these were the comments --
11 the social media comments made. And if we look
12 back at Brixley 2113, from -- from jackedpeanut --
13 so, let's see. They -- you testified earlier that
14 this commenter made the observation that they
15 purchased a bag from Thread Wallets, that took your
16 design and made it worse. Is that correct?

17 A. Correct.

18 Q. When they say "made it worse," does
19 that -- does that say to you that they viewed the
20 bag identically?

21 MS. FRANDSEN: Objection. Speculation.
22 Lack of foundation.

23 THE WITNESS: Am I allowed to answer
24 that? Okay. Do you mind saying that question one
25 more time?

1 Q. (BY MR. TODD) Yeah. Based off this
2 comment, do you believe that this shows that --
3 that this commenter viewed the bags as not
4 identical?

5 MS. FRANSEN: Objection. Foundation.
6 Speculation.

7 THE WITNESS: I don't think he found them
8 identical, no.

9 Q. (BY MR. TODD) Okay. That's all I have
10 today. Thank you.

11 A. Thank you.

12 MR. TODD: I think we're good to go off
13 the record.

14 MS. FRANSEN: Before we go off, do you
15 want to read and sign?

16 MR. TODD: Yeah. We'll do a read and
17 sign.

18 (Proceedings concluded at 5:22 p.m.)
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REPORTER CERTIFICATE

I, Phoebe Moorhead, a Certified Shorthand Reporter, in and for the State of Utah, do hereby certify:

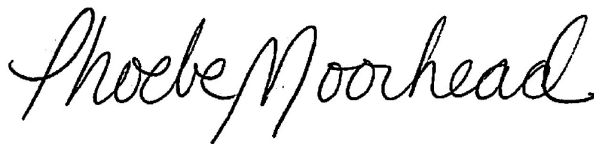
That the testimony of KIMBERLY O'CONNELL, the witness in the foregoing proceeding named, was taken on October 22, 2024; that said witness was by me, before examination, duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause;

That the testimony of said witness was reported by me in stenotype and thereafter transcribed into typewritten form;

That the same constitutes a true and correct transcription of said testimony so taken and transcribed and that the said witness testified as in the foregoing annexed pages set out.

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the event thereof.

Certified and dated this 2nd day of November, 2024.



PHOEBE S. MOORHEAD, RMR, CRR
Certified Shorthand Reporter
for the State of Utah

Case: Thread Wallets vs. Brixley
Case No.: 2:23-cv-00874-JNP-JCB
Date: October 22, 2024
Reporter: Phoebe Moorhead, RMR, CRR

WITNESS CERTIFICATE

State of Utah)
)
County of Salt Lake)

I, KIMBERLY O'CONNELL, HEREBY DECLARE
UNDER PENALTY OF PERJURY: That I am the witness
referred to in the foregoing testimony; that I have
read the transcript and know the contents thereof;
that with these corrections I have noted this
transcript truly and accurately reflects my
testimony.

PAGE-LINE REASON	CHANGE/CORRECTION

No corrections were made.

Executed on this _____ day of _____,
20____.

KIMBERLY O'CONNELL